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No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

FRANK MACDONALD, in His Official Capacity as the Labor Commissioner of the State of Nevada,

Petitioner,

v.

ASSOCIATED BUILDERS AND CONTRACTORS, INC., SIERRA NEVADA CHAPTER; ELECTRICAL JOINT APPRENTICESHIP COMMITTEE; SIERRA NEVADA CHAPTER ABC APPRENTICESHIP TRUST FUND,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

DID THE NINTH CIRCUIT ERR BY RULING THAT NRS 338.080(2) IS PREEMPTED BY ERISA AND BY JUDICIALLY CREATING AND IMPOSING ON NEVADA A REQUIREMENT FOR AUTOMATIC APPROVAL BY THE NEVADA STATE APPRENTICESHIP COUNCIL OF ALL PROGRAMS REGISTERED BY THE FEDERAL BUREAU OF APPRENTICESHIP AND TRAINING IN DIRECT CONTRAVENTION TO THE EXPRESS TERMS AND INTENT OF THE FITZGERALD ACT?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

OPINIONS AND JUDGMENTS BELOW 2

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL PROVISION, STATUTES, AND REGULATIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 5

THE NINTH CIRCUIT ERRED BY RULING THAT NRS 338.080(2) IS PREEMPTED BY ERISA AND BY JUDICIALLY CREATING AND IMPOSING ON NEVADA A REQUIREMENT FOR AUTOMATIC APPROVAL BY THE NEVADA STATE APPRENTICESHIP COUNCIL OF ALL PROGRAMS REGISTERED BY THE FEDERAL BUREAU OF APPRENTICESHIP AND TRAINING IN DIRECT CONTRAVENTION TO THE EXPRESS TERMS AND INTENT OF THE FITZGERALD ACT 5

1. The Ninth Circuit Exceeded the Express Language and Intent of the Fitzgerald Act and 29 C.F.R. Part 29 in Finding that NRS 338.080(2) Was Preempted by ERISA. 12

2. The Ninth Circuit's Opinion Will Create Upheaval and Doubt Among Thirty SACs. 21

3. The Ninth Circuit's Opinion is Raw Judicial Legislation 26

CONCLUSION 30

APPENDICES

TABLE OF AUTHORITIES

CASES

Associated Builders & Contractors v. MacDonald, 731 F.Supp. 966 (D.Nev. 1989) .....2, Appx.B

Curtis v. Loether, 415 U.S. 189, 94 S.Ct. 1005 (1974) 13

Electrical Joint Apprenticeship v. MacDonald, ____ F.2d ____ (9th Cir., November 8, 1991) ...2, 13, 18, 28, Appx.A

Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 98 S.Ct. 2010 (1978) 26

Moody v. Albemarle Paper Co., 417 U.S. 623, 94 S.Ct. 2513 (1974) 27

St. Martin Evangelical Lutheran v. South Dakota, 451 U.S. 777, 101 S.Ct. 2142 (1981) 13

United States v. Locke, 471 U.S. 93, 105 S.Ct. 1785 (1985).....26

U.S. v. Thirty-Seven Photographs, 402 U.S. 363, 91 S.Ct. 1400 (1971) 13

FEDERAL STATUTES

28 U.S.C. §1254 2
29 U.S.C. §1144(a) 2, Appx.C-1
29 U.S.C. §1144(d) 2, 13, Appx.C-1
42 U.S.C. §50 ..... 2, 6, 7, 13, 14, Appx.C-1

FEDERAL REGULATIONS

29 C.F.R. Part 29 ..... 6, 7, 11, 13, 14, 15, 18, 19, ... 20, 24, 25, 29
29 C.F.R. §29.1(b) 2, 7, 8, 14, Appx.C-2
29 C.F.R. §29.2(k) 14
29 C.F.R. §29.2(o) 2, 14, 20, Appx.C-2
29 C.F.R. §29.3(a) 14
29 C.F.R. §29.12 ..... 2, 13, 14, Appx.C-3
29 C.F.R. §29.12(a) 8, 11, 14, 20, 21, Appx.C-3
29 C.F.R. §29.12(a)(5) 15, 18, Appx.C-3
29 C.F.R. §29.12(b) 9, Appx.C-3
29 C.F.R. §29.12(b)(8) 9, Appx.C-5
29 C.F.R. §29.12(e)(1) 14, Appx.C-7
29 C.F.R. §29.12(e)(2) 14, Appx.C-7
29 C.F.R. §29.13 ..... 2, 14, 19, Appx.C-8
29 C.F.R. §29.13(d) 14, Appx.C-9
29 C.F.R. §29.13(e) 14, Appx.C-10
29 C.F.R. §29.13(f) 14, Appx.C-10

STATE STATUTES

Ariz.Rev.Stat. §§23-221 to 23-225 22
Cal. Labor Code §1777.5 23
Cal. Labor Code §§3070 to 3098 22
Conn.Gen.Stat §§31-51a to 31-51e 22

Del. Code tit. 19, §§8512 22
D.C.Code §§36-401 to 36-415 22
Fla.Stat. §§446.011 to 446.101 22
Haw.Rev.Stat. §§72-1 to 72-8 22
Kan.Stat. §§44-639 22
Ky.Rev.Stat. 343.010 to 343.090 22
La.Rev.Stat. §§23:381 to 23:392.....22
Maine Rev.Stat. tit. 26, §§1001 to 1007 22
Md. State Fin. & Proc. Code, §17-201(b) 22, 24
Md. State Fin. & Proc. Code, §17-208(e) 23
Mass.Gen.L. ch. 23, §§11E to 11L 22
Mass.Gen.L. ch. 149, §26 23
Minn.Stat. §§178.01 to 178.10.....22
Minn.Stat. §178.03(4).....24
Mont.Code §§39-6-101 to 39-6-107.....22
Nev.Rev.Stat. 338.080 .....3, 4, 12, Appx.C-12
Nev.Rev.Stat. 338.080(2) 18, 21, 23, 24, 28
Nev.Rev.Stat. Chapter 610 .....6, 11, 18
Nev.Rev.Stat. 610.010 to 610.190 22
N.H.Rev.Stat. §§278:1 to 278:10 22
N.M.Stat. 50-7-1 to 50-7-7 22
N.Y. Labor Law §§810 to 818 22
N.Y. Labor Law §§220(3) & 231(7)(a) 23
N.C.Gen.Stat. §§94-1 to 94-11 22
Ohio Rev. Code §§4101.25 to 4101.30 22
Ohio Rev. Code §4115.05 23
Or.Rev.Stat. §§660.002 to 660.205 23
Or.Rev.Stat. §660.158 24
43 Pa.Cons.Stat. §§90.1 to 90.10 22
43 Pa.Cons.Stat. §164-3(7).....23
P.R. Laws tit. 29, §§11 to 18.....22
R.I.Gen.Laws §§28-45-1 to 28-45-17 22
R.I.Gen.Laws §28-45-16 24

R.I.Gen.Laws §37-13-7(c) 23
Vt.Stat. tit. 21, §§1101 to 1105 22
Va.Code §§40.1-117 to 40.1-127 22
Wash.Rev.Code §§49.04.010 to 49.04.910 22
Wash.Rev.Code §39.12.021 ..... 23, 24
Wis.Stat. §§106.01 to 106.03)(1911). 23

MISCELLANEOUS AUTHORITIES

42 Fed.Reg. 10139 (Feb. 18, 1977),
paragraph 8 ..... 3, 9, 15, 19, Appx.C-10

New Mexico AGO 6244 (1955-1956) 23

Washington AGO 1985 No.5 24

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FRANK MacDONALD, in his official capacity as the Labor Commissioner of the State of Nevada

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ASSOCIATED BUILDERS AND CONTRACTORS, INC., SIERRA NEVADA CHAPTER; ELECTRICAL JOINT APPRENTICESHIP COMMITTEE; SIERRA NEVADA CHAPTER ABC APPRENTICESHIP TRUST FUND,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Frank MacDonald respectfully petitions this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this action on November 8, 1991.

OPINIONS AND JUDGMENTS BELOW

The opinion of Ninth Circuit Court of Appeals has not yet been published in the Federal Reporter, but it can be found in an advance sheet publication from the Ninth Circuit. A reprint of this advance sheet publication is in the Appendix A and will be referred to herein as *MacDonald II*.

The district court officially published its opinion as *Associated Builders & Contractors v. MacDonald*, 731 F.Supp. 966 (D.Nev. 1989). This opinion is reprinted in the Appendix B and will be referred to herein as *MacDonald I*.

STATEMENT OF JURISDICTION

The judgment to be reviewed was entered by the Ninth Circuit Court of Appeals on November 8, 1991. No rehearing was sought.

The Court has jurisdiction to review the judgment of the Ninth Circuit pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The statutes and regulations involved in this case are as follows:

29 U.S.C. §§1144(a) and (d), commonly known as the Employee Retirement Income and Security Act of 1974 (hereinafter ERISA);

42 U.S.C. §50, commonly known as the Fitzgerald Act;

29 C.F.R. §§ 29.1(b), 29.2(o), 29.12, and 29.13;

42 Fed.Reg. at 10139 (February 18, 1977), at paragraph 8; and

NRS 338.080.

Because of the provisions involved are lengthy, they have only been cited here and the pertinent text can be found in the Appendix at C-1.

STATEMENT OF THE CASE

On November 8, 1984, Respondents Associated Builders and Contractors, Inc. Sierra Nevada Chapter, Electrical Joint Apprenticeship Committee, Sierra Nevada ABC Apprenticeship Trust Fund (hereinafter ABC) presented its proposal for an electrician apprentice program to the Nevada State Apprenticeship Council (hereinafter NSAC). ABC claimed that it had already received the approval of the federal Bureau of Apprenticeship and Training (hereinafter BAT) for its electrician apprentice program.

On November 29, 1984, after due consideration of ABC's application, NSAC denied the application and did not approve ABC's proposed electrician apprentice program.

On July 21, 1989, ABC filed its complaint against only the Nevada Labor Commissioner in this matter along with a motion for preliminary injunction.

On August 15, 1989, the Nevada Labor Commissioner filed his Answer.

On October 20, 1989, a hearing was held before the United States District Court, District of Nevada, Judge Bruce R. Thompson presiding. At this hearing, the motion for preliminary injunction was consolidated with a final adjudication on the merits. Pursuant to a stipulation of the

parties, the hearing included oral argument but no evidentiary hearing.

On December 22, 1989, the district court entered its Findings of Fact, Conclusions of Law and Judgment.

On January 5, 1990, the Labor Commissioner filed a motion to alter or amend the judgment.

On February 28, 1990, the district court issued its order on the motion to alter or amend.

The district court's Findings of Fact, Conclusions of Law and Judgment, as published at 731 F.Supp. 966, held that NRS 338.080(2) was preempted by ERISA and enjoined the Labor Commissioner from enforcing the provisions NRS 338.080 against ABC apprentices. The district court also held that NRS 338.080 was unconstitutional on its face and as applied to ABC as NRS 338.080 related to apprenticeship programs approved by BAT.

The Labor Commissioner appealed the district court's judgment to the Ninth Circuit of Appeals.

On April 8, 1991, oral argument was held before the Ninth Circuit Court of Appeals before Procter Hug, Jr. and Cecil F. Poole, Circuit Judges, and C. Clyde Atkins, District Judge sitting by designation.

On November 8, 1991 the Ninth Circuit entered its opinion and order. In its order, the Ninth Circuit affirmed the district court's ruling that NRS 338.080, as interpreted by the Labor Commissioner, was preempted by ERISA. The Ninth Circuit vacated the district court's holding that NRS 338.080 was unconstitutional as violating the Equal Protection Clause of the United States Constitution. No rehearing was sought of the Ninth Circuit's opinion and order. This Petition for Writ of Certiorari ensues from the Ninth Circuit's opinion and order.

Federal subject matter jurisdiction in the court of first instance was pursuant to federal questions under ERISA (29 U.S.C. §§1144(a) and 1132(a)) and 42 U.S.C. §1983.

REASONS FOR GRANTING THE WRIT

THE NINTH CIRCUIT ERRED BY RULING THAT NRS 338.080(2) IS PREEMPTED BY ERISA AND BY JUDICIALLY CREATING AND IMPOSING ON NEVADA A REQUIREMENT FOR AUTOMATIC APPROVAL BY THE NEVADA STATE APPRENTICESHIP COUNCIL OF ALL PROGRAMS REGISTERED BY THE FEDERAL BUREAU OF APPRENTICESHIP AND TRAINING IN DIRECT CONTRAVENTION TO THE EXPRESS TERMS AND INTENT OF THE FITZGERALD ACT.

Three substantial reasons justify the granting of certiorari to review the opinion of the Ninth Circuit Court of Appeals:

1. The Ninth Circuit exceeded the express language and dictates of the Fitzgerald Act and the implementing regulations in finding that the Nevada Labor Commissioner's interpretation of NRS 338.080(2) is preempted by ERISA, and only this Court can rebalance the apprenticeship law between the federal and state agencies.

2. Twenty-six states, including Nevada, the District of Columbia, and three

United States protectorates have apprenticeship laws similar to Nevada's that are registered pursuant to the Fitzgerald Act, and the Ninth Circuit's opinion has generated upheaval and unsettling doubt where no such doubt and upheaval were necessary, leaving thirty state apprenticeship agencies in doubt as to the future applicability of their apprenticeship laws.

3. In finding ERISA preemption, the Ninth Circuit engaged in raw "judicial legislation," grafting onto NRS 338.080(2) an automatic reciprocity requirement that is not required by either the Fitzgerald Act or the implementing regulations, and only this Court can curb such "judicial legislation."

The basic question before the district court, the Ninth Circuit, and now this Court is whether, to avoid ERISA preemption, the NSAC must automatically approve apprenticeship programs that have previously received BAT approval. Both the Ninth Circuit and the district court committed a fundamental error by judicially grafting a requirement of automatic reciprocity between apprenticeship programs registered by the BAT and the NSAC onto the Fitzgerald Act (29 U.S.C. § 50, et seq.) as implemented by regulation (29 C.F.R. Part 29) and as implemented in Nevada through the Nevada Apprentice Act (NRS Chapter 610). Automatic reciprocity is in contravention to the express language of the Fitzgerald Act and the regulations. By this fundamental error, the Ninth Circuit and the district court have relegated the NSAC into a mere "rubber stamp"

of BAT-registered programs. The issue presented is exceptionally important to all thirty state apprenticeship councils or agencies (hereinafter SACs), because the Ninth Circuit's opinion, if allowed to stand, will render all SACs virtually impotent and useless.

A correct understanding of the present controversy must come through an understanding of the statutory framework within which the controversy arose. Accordingly, following is a brief survey of the pertinent statutory and regulatory provisions to provide the necessary context within which this controversy must be decided.

The Fitzgerald Act is a model of pithy legislation, consisting of only three paragraphs, of which only 29 U.S.C. § 50 is relevant to the present inquiry, and it provides in pertinent part:

> The Secretary of Labor is hereby authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contract of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, ***to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship***.... (Emphasis supplied).

Pursuant to the dictates of the brief Fitzgerald Act, the Secretary of Labor promulgated regulations, 29 C.F.R. Part 29. 29 C.F.R. § 29.1(b) states the intent of the regulations:

> The purpose of this part is to set forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning the registration, ***for certain Federal purposes***, or acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies, and procedures cover the registration, cancellation and deregistration or [sic] apprenticeship programs and of apprenticeship agreements: ***the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes***; and matters relating thereto. (Emphasis supplied).

Thus, both the Fitzgerald Act and 29 C.F.R. § 29.1(b) recognize and expressly create a role for registered state apprenticeship agencies.

State apprenticeship agencies recognized by the Secretary of Labor are given exclusive power to make determinations of the appropriateness of apprenticeship programs within their jurisdiction by 29 C.F.R. § 29.12(a), which provides in pertinent part:

> The Secretary's recognition of a State Apprenticeship Agency or Council (SAC) ***gives the SAC the authority to determine whether an apprenticeship***

> ***program conforms with the Secretary's published standards*** and the program is, therefore, eligible for those Federal purposes which require such a determination by the Secretary.... (Emphasis supplied).

Thus, where an SAC has received federal recognition, the SAC is the agency empowered to make determinations as to the approval of apprenticeship programs brought within the state's jurisdiction. To receive federal recognition, a state apprenticeship council must satisfy a lengthy list of requisites provided in 29 C.F.R. § 29.12(b).

Within the list of requisites, there is no requirement that an SAC must grant automatic reciprocal recognition of BAT-registered programs or sister-state SAC-approved programs. In fact, only one section of the requirements imposed on SACs addresses any form of reciprocity (29 C.F.R. § 29.12(b)(8)), but that subsection is inapplicable to the instant case. In explanatory comments entitled "Policies and Procedures" that served as an elucidating preamble to 29 C.F.R. Part 29, the Secretary of Labor expressly discussed the interrelationship of SACs and the BAT:

> 8. Several persons believed that the requirements contained throughout § 29.12 represent an unwarranted intrusion of Federal control into the operations of the SACs. The Department believes that this conclusion is not correct.
>
> As far as the Department knows, the recognized SACs are already in substantial conformity with the ***minimum standards***

set forth in this § with the exception of paragraphs (b)(8) and (b)(10), which have been addressed earlier. Where they are not, paragraph (c) affords the State a 120-day period within which to conform. An extension of time may be granted by the Administrator of the Bureau for good cause.

It does not seem to the Department that it will be an undue hardship for the SACs to conform to the ***minimal requirements*** set forth in this part or to provide to the Department the information required by § 29.12(a), since recognition by the Secretary has important economic effects (as in the operation of the Davis-Bacon Act and the Service Contract Act) and important effects in promoting and improving the apprenticeship system. For these reasons it seems reasonable to the Department that the Secretary have documentary evidence that a recognized State agency is conforming to the ***minimum standards*** set forth in this part.

Some persons have read §29.12(a)(5) in a manner which does not appear justified by the text. It requires a SAC to submit to the Bureau "a description of policies and operating procedures which depart from or impose requirements in addition to those prescribed in this part." While the Bureau has the right to approve or disapprove such variations, ***the purpose of this provision is not to enable the Bureau to control SACs or to dictate policies***

> ***and procedures***. Rather, it allows the Secretary to be informed of the policies and procedures of the SACs to which the Secretary has accorded recognition. The Department can then make its own judgment on whether these policies and procedures conflict with the requirements of this part. (Emphasis supplied). 42 Fed. Reg. 10139 (Feb. 18, 1977).

In 1939, the Nevada Legislature created the Nevada Apprentice Act, codified as NRS Chapter 610. The Nevada Apprentice Act created NSAC, and NSAC is a state apprenticeship council recognized by the Secretary of Labor. To have granted such recognition, the Secretary of Labor must have determined that the Nevada Apprentice Act complied with the applicable federal requirements. 29 C.F.R. §29.12(a). In fact, it has never been contended by any party to this action nor determined by any court that the Nevada Apprentice Act does not fully comply with the Fitzgerald Act and 29 C.F.R. Part 29. The NSAC is one of thirty SACs that have received federal recognition.[1]

Respondent ABC does not and has not challenged any of the statutes contained in the Nevada Apprentice Act as being in contravention to the Fitzgerald Act or 29 U.S.C.

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[1] The states that have SACs that have been approved and registered by the Secretary of Labor are: Arizona, California, Connecticut, Delaware, Florida, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin. Additionally, SACs have been approved and registered in the District of Columbia, Puerto Rico, and the Virgin Islands.

Part 29. Rather, ABC claims that NRS 338.080(2) is preempted by ERISA. NRS 338.080(2) provides:

> **Exemptions.** None of the provisions of NRS 338.020 to 338.090, inclusive, apply to:
> ***
> 2. Apprentices recorded under the provisions of chapter 610 of NRS.

The effect of NRS 338.080(2) is to exempt contractors employing apprentices in NSAC-approved programs from the "prevailing wage" requirements of NRS 338.020 to 338.090 that would otherwise be applicable to the payment of wages to workers on Nevada ***state*** public works projects. ABC argued that NRS 338.080(2) was preempted by ERISA because only apprenticeship programs registered by NSAC would be eligible for the exemption of NRS 338.080(2) and that a program registered only with the BAT would not be allowed the same exemption. Both the district court and the Ninth Circuit agreed with ABC's arguments, and thus this Petition ensues.

1. THE NINTH CIRCUIT EXCEEDED THE EXPRESS LANGUAGE AND INTENT OF THE FITZGERALD ACT AND 29 C.F.R. PART 29 IN FINDING THAT NRS 338.080(2) WAS PREEMPTED BY ERISA.

The first reason why the Ninth Circuit's ruling was incorrect and dangerous is that the ruling is antithetical and

contrary to the express language and intent of the Fitzgerald Act and 29 C.F.R. Part 29. As a result of the Ninth Circuit's fundamental misunderstanding of the statutory framework established by the Fitzgerald Act, the Ninth Circuit's misapplication of ERISA and the Fitzgerald Act threatens to destroy the salutary apprenticeship system that the Fitzgerald Act was established to foster.

The "cardinal principle" of this Court in construing a statute is whether a construction of the statute is fairly possible that will avoid constitutional questions. *St. Martin Evangelical Lutheran v. South Dakota*, 451 U.S. 777, 780, 101 S.Ct. 2142, 2147 (1981); *Curtis v. Loether*, 415 U.S. 189, 193, 94 S.Ct. 1005, 1007 (1974); *U.S. v. Thirty-seven Photographs*, 402 U.S. 363, 369, 91 S.Ct. 1400, 1404 (1971).

Initially, the Ninth Circuit correctly acknowledged that ERISA preemption would not extend to the Fitzgerald Act or 29 C.F.R. Part 29. *MacDonald II*, at 15247 (Appendix A). This is entirely in keeping with the "savings clause" contained in ERISA itself. 29 U.S.C. §1144(d). Where the Ninth Circuit erred is in finding that Nevada law was not fully in compliance with the Fitzgerald Act.

A cascade of logic flows from the ERISA "savings clause" provided at 29 U.S.C. §1144(d). ERISA does not preempt "any law of the United States ... or any rule or regulation issued under any such law." 29 U.S.C. §1144(d). The Fitzgerald Act and 29 C.F.R. Part 29 are laws of the United States and regulations saved from ERISA preemption. *MacDonald II*, at 15247 (Appendix A). The Fitzgerald Act and 29 C.F.R. Part 29 expressly allow for the recognition of SACs. 29 U.S.C. §50; 29 C.F.R. §29.12. Thus, because NSAC is recognized by the Secretary of Labor, it is necessarily fully ***in compliance*** with the

Fitzgerald Act, and NRS Chapter 610 is ***not preempted*** by ERISA.

Recognition of an SAC by the Secretary of Labor "***gives the SAC the authority to determine whether an apprenticeship program conforms with the Secretary's published standards*** and the program is, therefore, eligible for those ***Federal purposes*** which require such a determination by the Secretary." (Emphasis supplied). 29 C.F.R. §29.12. Thus, NSAC was given the authority by the Secretary of Labor to determine whether apprenticeship programs in Nevada conform with the Fitzgerald Act and 29 C.F.R. Part 29.

The Fitzgerald Act and 29 C.F.R. Part 29 specifically address the registration of apprenticeship programs for "***Federal purposes***."[2] State or local purposes for registration are addressed only in 29 C.F.R. §29.2(o), which provides:

> (o) *Recognized State Apprenticeship Agency or recognized State Apprenticeship Council* shall mean an organization approved by the Bureau as an agency or council which has been properly constituted under an acceptable law or Executive order, and has been approved by the Bureau as the appropriate body for ***State registration and/or approval of local***

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[2] Reference is made to "federal purposes" in the following: 29 U.S.C. §50; 29 C.F.R. §§ 29.1(b), 29.2(k) (definition of "Federal purposes"), 29.3(a), 29.12(a), 29.12(e)(1), 29.12(e)(2), 29.13, 29.13(d), 29.13(e), and 29.13(f).

apprenticeship programs and agreements for Federal purposes. (Emphasis supplied).

Thus, the logic of the Fitzgerald Act, as implemented by 29 C.F.R. Part 29, is that ***for Federal purposes*** an apprenticeship program can be approved either by the BAT or a recognized SAC, but ***for State purposes*** an apprenticeship program's approval is left to a recognized SAC.

Furthermore, the "Policies and Procedure" that served as the preamble to 29 C.F.R. Part 29 clearly show that the intent of the drafters of 29 C.F.R. Part 29 intended the requirements of 29 C.F.R. § 29.12 to be ***minimal requirements***. Three references to "minimum standards" or "minimal requirements" are made in paragraph 8. 42 Fed. Reg. at 10139. Also, paragraph 8 acknowledges that 29 C.F.R §29.12(a)(5) anticipates that SACs may make requirements in addition to the requirements contained in 29 C.F.R. §29.12 and that it was the drafters' intention that "the Bureau [have] the right to approve or disapprove such variations, [and that] the purpose of this provision ***is not to enable the Bureau to control SACs or to dictate policies and procedures***." (Emphasis supplied). 42 Fed. Reg. at 10139.

In light of the logic of the Fitzgerald Act, 29 C.F.R. Part 29, and the drafters' intent contained in the "Policies and Procedures" preamble to 29 C.F.R. Part 29, the Ninth Circuit's pronouncements are jarring. In two paragraphs crucial to the Ninth Circuit's holding, the Ninth Circuit's misunderstanding of the Fitzgerald Act becomes apparent.

It is clear that the JAC apprenticeship program, sponsored by ABC and approved

by BAT, is an apprenticeship program as defined by ERISA, ***and thus cannot be regulated by the State apart from its approval functions under the Fitzgerald Act regulations***. As we have noted, in order for any apprenticeship program to work effectively, the employer must be able to pay a lesser wage to the apprentices while they are learning their skilled trade. The denial of the exemption to the BAT-approved JAC apprenticeship program, because it was not also approved by the Nevada State Apprenticeship Council, ***in effect forces ABC's JAC apprenticeship program to comply with the standards of the State Committee, independent and apart from the regulation authorized and provided for by the Fitzgerald Act and its accompanying regulations***. The approval of the JAC apprenticeship program by BAT in effect establishes that that program meets the requirements of the Fitzgerald Act, the only apprenticeship regulations that are permissible as not being preempted by § 524(a) of ERISA. ***Any state regulation inconsistent with that determination is preempted by §514(a) of ERISA***. Thus, the decision of the district court in enjoining the Nevada Labor Commissioner from enforcing NRS §338.080, so as not to exempt the JAC apprenticeship program from the provisions

of the Nevada prevailing wage statutes, is warranted because an order denying the exemption amounts to indirect State regulation of the apprenticeship program. (Footnote omitted).

We thus have a state law within the meaning of ERISA, 1144(c)(1), that requires the proposers of an apprenticeship program ***to comply with state standards apart from those set forth in the non-preempted Fitzgerald regulations***. To be preempted under ERISA, a state law must both "relate to" and "purport to regulate" directly or indirectly an employee welfare benefit plan. *Hydrostorage*, 891 F.2d at 729; *Jones*, 846 F.2d at 1218. "A law 'purports to regulate' a plan if it attempts 'to reach in one way or another the terms and conditions of employee benefit plans.'" *Jones*, 846 F.2d at 1218 (quoting *Lane v. Goren*, 743 F.2d 1337, 1339 (9th Cir. 1984)). The intended action of the Nevada Labor Commissioner to deny the exemption of the JAC apprenticeship program because it had not obtained the approval of the State agency is an interpretation of a law that compels preemption. Just as our opinion in *Hydrostorage* did not declare the entire California statutory provision preempted but, instead, the administrative application of that provision preempted, so we do not conclude NRS § 338.080 preempted, but rather the Labor Commissioner's intended

interpretation and application of it. (Emphasis supplied). *MacDonald II*, at 15249-15250 (Appendix A).

The Ninth Circuit's reading of the Fitzgerald Act and the Nevada Apprentice Act is wrong. The Nevada Apprentice Act does not, in any way, set "state standards apart from those set forth in the non-preempted Fitzgerald regulations" or "standards of the State Committee, independent and apart from the regulation authorized an provided for by the Fitzgerald Act and its accompanying regulations" or standards that were "inconsistent" with the Fitzgerald Act. Indeed, the argument frequently asserted by ABC to the Ninth Circuit was that the standards in NRS Chapter 610 and 29 C.F.R. Part 29 were virtually identical.

The question before the Ninth Circuit was not whether the Nevada Apprentice Act set standards apart from the Fitzgerald Act, but rather whether the NSAC was required to automatically approve an apprenticeship program that had received BAT recognition. ***No such reciprocity is required*** by the Fitzgerald Act or 29 U.S.C. Part 29. Instead, the logic of the Fitzgerald Act and 29 U.S.C. Part 29 leaves the authority to approve state apprenticeship programs for state purposes with the SACs. Thus, any requirement by NSAC that ABC apply to NSAC for state approval for state programs is entirely consistent with and flows directly from the Fitzgerald Act and 29 U.S.C. Part 29.

Furthermore, even if the exemption provided in NRS 338.080(2) is viewed as a "standard apart" from the Fitzgerald Act as is asserted by the Ninth Circuit, such "standards apart" are expressly contemplated and allowable under the Fitzgerald Act. 29 C.F.R. §29.12(a)(5); 42

Fed.Reg. at 10139, paragraph 8. The drafters of 29 C.F.R. Part 29 acknowledged that their intent was not to control SACs, but rather to establish minimal standards with which all SACs would need to comply. If the Secretary of Labor disagreed with any "standards apart" from the Fitzgerald Act made by an SAC, the Secretary of Labor could assert that the requirements were improper, and could, if necessary, initiate derecognition proceedings against the SAC if the SAC insisted on its "standards apart" from the Fitzgerald Act. See, 29 C.F.R. § 29.13. The controversy before the Ninth Circuit, though, did not involve derecognition, and in fact, the Secretary of Labor, the BAT, and the NSAC were ***not*** in any way parties in the action nor involved in any other way.

ABC itself acknowledged that the path to apprenticeship program approval for Nevada state public works projects ran through the NSAC because ABC did apply to the NSAC for approval. Indeed, only two facts were used by the district court and the Ninth Circuit as the factual support for their decisions: (1) that Respondents applied to the NSAC and were denied approval, and (2) that no non-union apprenticeship program had ever been approved by the NSAC. In the interim between those opinions and this Petition, NSAC has approved three non-union apprenticeship programs, including a program submitted by a southern Nevada chapter of ABC.

Thus, the procedures established under the Fitzgerald Act and 29 C.F.R. Part 29 had been followed to the letter: an SAC had been applied to by an apprenticeship program seeking local and state approval. It was not until over four years ***after*** NSAC denied ABC's application that ABC filed the instant action against the Labor Commissioner. Viewed in this context, the instant action is nothing more than an

appeal to the federal courts of a decision by the NSAC and the Labor Commissioner. Nevada has statutory procedures that would have allowed judicial review by a Nevada state court, but ABC did not avail itself of these procedures. See, NRS 233B.130 to 233B.140.

The devastating effect of the Ninth Circuit's holding is that while Nevada's statutory scheme has received federal recognition as being fully in compliance with the Fitzgerald Act, it is preempted by the very same Fitzgerald Act. The Fitzgerald Act, as implemented by 29 C.F.R. Part 29, specifically and expressly provides that SACs are the agencies for approval of apprenticeship programs for state and local purposes (29 C.F.R. § 29.2(o)), and that once recognized, SACs have the approval authority for apprenticeship programs in their jurisdictions (29 C.F.R. § 29.12(a)). The Fitzgerald Act allows that approval of apprenticeship programs for state and local purposes is to be left to the SACs. NSAC is a federally-recognized agency. And yet, when NSAC insisted that the dictates of the Fitzgerald Act as implemented through the NSAC be followed for ABC's programs that sought approval for state and local projects, NSAC is told that its efforts are preempted by the same Fitzgerald Act that empowered it and to which it was adhering. The Ninth Circuit, in effect, ordered the Labor Commissioner to strictly adhere to the Fitzgerald Act and then told the Labor Commissioner that it was impossible for him to comply with the Fitzgerald Act.

Thus, the Ninth Circuit's ruling far exceeded the question before the court and ran directly contrary to the express language and intent of the Fitzgerald Act and 29 C.F.R. Part 29. Had the Ninth Circuit correctly perceived that NSAC was acting entirely within its power and authority as granted by the Fitzgerald Act, it could not have ruled that

NRS 338.080(2) was preempted by ERISA because the Fitzgerald Act is not preempted by ERISA.

The Ninth Circuit abandoned the "cardinal principle" that constitutional questions should be avoided where possible. Had the Ninth Circuit followed the logic of the Fitzgerald Act as set out above, it would have found that the Nevada Apprentice Act was not preempted by ERISA because the Nevada Apprentice Act was entirely consistent with the Fitzgerald Act. If the Nevada Apprentice Act was not preempted by ERISA, NSAC's review of BAT-approved programs was also within the scope of NSAC's powers and authority flowing directly from the Fitzgerald Act and 29 C.F.R. §29.12(a). Thus, if BAT programs had to seek approval of NSAC to work on state and local projects, NRS 338.080(2) was and is consistent with NSAC's powers and authority that flow directly from the Fitzgerald Act. Following such a logical chain, the Ninth Circuit could have and should have avoided applying ERISA preemptively against NRS 338.080(2). Unfortunately, the Ninth Circuit did not follow the logical chain provided by the Fitzgerald Act, and thus erroneously found NRS 338.080(2) preempted by ERISA. By so doing, the Ninth Circuit violated the "cardinal principle" of statutory construction enunciated by this Court. Only the granting of the writ by this Court can allow rectification of the Ninth Circuit's errors.

2. THE NINTH CIRCUIT'S OPINION WILL CREATE UPHEAVAL AND DOUBT AMONG THIRTY SACS.

The Ninth Circuit's misapplication of ERISA preemption and the Fitzgerald Act potentially will affect the workings of all thirty existing registered SACs. Many of the SACs are similarly situated to NSAC in that they were created and have been operating for forty or fifty years, and only now are finding that ERISA may preempt long-standing portions of their laws that are vital to their operation of their SACs and apprenticeship programs within their jurisdiction.

Since the creation of the Fitzgerald Act, thirty SACs have been recognized by the Secretary of Labor.[3] Three

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[3] The apprenticeship acts or other legislation and the year of establishment of the acts or legislation for the thirty recognized SACs are as follows: Arizona (Ariz.Rev.Stat. §§23-221 to 23-225)(1941); California (Cal. Labor Code §§3070 to 3098)(1936); Connecticut (Conn.Gen.Stat §§31-51a to 31-51e)(1959); Delaware (Del. Code tit. 19, §§8512)(1939); District of Columbia (D.C.Code §§36-401 to 36-415)(1946); Florida (Fla.Stat. §§446.011 to 446.101)(1947); Hawaii (Haw.Rev.Stat. §§72-1 to 72-8)(1941); Kansas (Kan.Stat. §§44-639)(1941); Kentucky (Ky.Rev.Stat. 343.010 to 343.090)(1931); Louisiana (La.Rev.Stat. §§23:381 to 23:392)(1938); Maine (Maine Rev.Stat. tit. 26, §§1001 to 1007)(1943); Maryland (Md. State Fin. & Proc. Code, §§17-201(b))(1937); Massachusetts (Mass.Gen.L. ch. 23, §§11E to 11L)(1941); Minnesota (Minn.Stat. §§178.01 to 178.10)(1939); Montana (Mont.Code §§39-6-101 to 39-6-107)(1941); Nevada (Nev.Rev.Stat. §§610.010 to 610.190)(1939); New Hampshire (N.H.Rev.Stat. §§278:1 to 278:10)(1947); New Mexico (N.M.Stat. 50-7-1 to 50-7-7)(1945); New York (N.Y. Labor Law §§810 to 818)(1941); North Carolina (N.C.Gen.Stat. §§94-1 to 94-11)(1939); Ohio (Ohio Rev. Code §§4101.25 to 4101.30)(1959); Oregon (Or.Rev.Stat. §§660.002 to 660.205)(1931); Pennsylvania (43 Pa.Cons.Stat. §§90.1 to 90.10)(1961); Puerto Rico (P.R. Laws tit. 29, §§11 to 18)(1947); Rhode Island (R.I.Gen.Laws §§28-45-1 to 28-45-17)(1967); Vermont (Vt.Stat. tit. 21, §§1101 to 1105)(1936); Virginia (Va.Code §§40.1-117 to 40.1-127)(1938); Virgin Islands (code unavailable)(1961); Washington (Wash.Rev.Code §§49.04.010

things are notable in a survey of the thirty SAC acts: (1) seven states have laws similar to NRS 338.080(2) that require SAC approval of an apprenticeship program before a discounted wage can be paid apprentices on state public works projects, (2) four states have express statutory authorization for reciprocal recognition of BAT approved programs by the SACs, and (3) two states have both discounted wages on state public works projects for SAC-approved apprentices and express statutory authorization for reciprocity between BAT approved programs and the SACs.

Seven states (California, Massachussets, New Mexico,[4] New York, Ohio, Pennsylvania, and Washington)[5] have statutes similar to NRS 338.080(2). In these states, a contractor may pay apprentices less than the "prevailing wage" or may pay a special "prevailing wage"

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to 49.04.910)(1941); and Wisconsin (Wis.Stat. §§106.01 to 106.03)(1911).

[4] In Attorney General Opinion 6244 (1955-1956), the New Mexico Attorney General interpreted New Mexico apprenticeship laws and the prevailing wage laws to mean that only SAC-approved apprentices are eligible for reduced wages on state public works projects.

[5] The statutes in each of the nine states discussed that address the need for SAC approval for apprentices to receive favorable wage treatment are: California (Cal.Labor Code §1777.5); Maryland (Md. State Fin. & Procurement Code §17-208(e)); Massachussets (Mass.Gen.Laws ch. 149, §26); New Mexico (N.M.Stat §13-4-11); New York (N.Y. Labor Law §§220(3) and 231(7)(a)); Ohio (Ohio Rev.Code §4115.05); Pennsylvania (Pa.Cons.Stat. §165-2(7)); Rhode Island (R.I.Gen.Laws §37-13-7(c); Washington (Wash.Rev.Code §39.12.021).

for apprentices on state public works projects, and "apprentices" are defined in these states as apprentices in SAC-approved programs. In fact, the Washington Attorney General examined R.C.W. 39.12.021 (a statute exceptionally similar to NRS 338.080(2) in effect) in the context of whether BAT-approved programs must be accorded favorable wage treatment where R.C.W. 39.12.021 expressly applied only to SAC programs. The Washington Attorney General determined that BAT-approved programs could not be accorded favorable wage treatment absent remedial legislation. Washington AGO 1985 No.5. Thus, if the Ninth Circuit's opinion is allowed to stand, each of these seven states, as well as Nevada, will be forced to reconsider, interpret, or revamp their statutes so as to avoid the sweeping preemption created by the Ninth Circuit.

Four states (Maryland, Minnesota, Oregon, and Rhode Island)[6] have express statutory authorization for reciprocal recognition by the SAC of BAT-approved programs. If the reasoning of the Ninth Circuit is adhered to that state apprentice acts cannot make "standards apart" from the Fitzgerald Act and 29 C.F.R. Part 29, then the validity of the reciprocity statutes in the four states that have them is in doubt, since neither the Fitzgerald Act nor 29 U.S.C. Part 29 require such reciprocity. On the other hand, if paragraph 8 of the "Policies and Procedures" (42 Fed.Reg. at 10139)

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[6] The states and statutes that have express statutory authorization for reciprocity between BAT programs and SAC approval are: Maryland (Md.State Fin & Procurement Code §17-201(b)); Minnesota (Minn.Stat. 178.03(4)); Oregon (Or.Rev.Stat. §660.158); and Rhode Island (R.I.Gen.Laws 28-45-16). Minnesota's reciprocity is limited to non-construction trades.

is given credence, then the reciprocity requirements in the four states that have them would be permissible "standards apart" from the Fitzgerald Act. Regardless, it is notable that at least four states did not assume federal-state reciprocity existed, and instead actually expressly included such reciprocity in their laws.

Two of the states (Maryland and Rhode Island) that have statutes that allow reciprocity between BAT-approved programs and the SAC also allow for favorable wages to be paid to apprentices on state public works projects. Under the rationale espoused by the Ninth Circuit, presumably only Maryland and Rhode Island might pass muster, since only in these two states are BAT-approved programs expressly given reciprocity by the SACs and allowed favorable wage treatment on state prevailing wage projects. Of course, as has already been noted, if the Ninth Circuit's rationale is adhered to, it is questionable whether the Maryland and Rhode Island statutes would be upheld, since both are the result of "standards apart" from the Fitzgerald Act and 29 C.F.R. Part 29.

As the Fitzgerald Act, 29 U.S.C. Part 29, and the "Policies and Procedures" all make clear, the SAC's were intended to enjoy some autonomy. The SAC's were ***not*** intended to be mere rubber stamps for the BAT. And yet, amid the confusion created by the Ninth Circuit's opinion and order, one thing that is clear is that the Ninth Circuit believes that ERISA and the Fitzgerald Act were intended to create sinecure SACs. The entire system of thirty SACs stands imperiled, uncertain, and unsure by the Ninth Circuit's opinion and order.

The trouble created by the Ninth Circuit's opinion and order has potentially far-reaching effects. According to the rationale of the Ninth Circuit, statutes and rules affecting

the minimum wage paid apprentices, the working conditions for apprentices, health-safety protections for apprentices, and other such salutary statutes might be preempted as being "standards apart" from the Fitzgerald Act. Thus, instead of fostering and protecting apprentices, the effect of the Ninth Circuit's opinion and order might make apprenticeship unworkable, unusable, and dangerous to employers and apprentices. Unfortunately, because of the broad sweep of the Ninth Circuit's opinion, it is dubious whether any state statutory cure can be created, since the cure to the Ninth Circuit's concerns would involve the creation of yet another "standard apart" from the Fitzgerald Act and 29 C.F.R. Part 29, and thus any such statutory cure would also run afoul of ERISA. Thus the error in logic of the Ninth Circuit is exposed, and must be corrected by this Court through the granting of the writ.

3. THE NINTH CIRCUIT'S OPINION IS RAW JUDICIAL LEGISLATION.

This Court held in *United States v. Locke*, 471 U.S. 93, 95, 105 S.Ct. 1785, 1793 (1985), that just because a legislature "might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to achieve that which [the legislature] is perceived to have failed to do." There is a difference between "filling a gap left by [a legislature's] silence and rewriting rules that [the legislature] has affirmatively and specifically enacted." *Id.*, 471 U.S. at 95, 105 S.Ct. at 1793; *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625, 98 S.Ct. 2010, 2015 (1978). Courts are not "at liberty to engraft upon" a statute a meaning inconsistent with the historical limitations of a

statute. *Moody v. Albemarle Paper Co.*, 417 U.S. 623, 626, 94 S.Ct. 2513, 2515 (1974).

The Ninth Circuit's opinion creates a true Frankenstein's monster. By grafting a judicially-created federal-state reciprocity requirement onto NRS 338.080(2), the Ninth Circuit has created an entity that Nevada must abide, but cannot control. The text of the Ninth Circuit's "judicial legislation" creating this monster is found in two of the final paragraphs of its opinion and are part of the Ninth Circuit's order:

> The only State regulation of apprenticeship programs permitted by ERISA is in the application of the standards of the regulations issued under the Fitzgerald Act. Those regulations permit alternate avenues for the approval of apprenticeship programs. BAT approval is equivalent to state approval of the apprenticeship program as meeting those standards. ***Thus, if the exemption of NRS §338.080 is to apply at all, it must apply to programs that are approved by either BAT or the State Apprenticeship Council.***
>
> We are confident that it would be contrary to Nevada legislative intent to construe NRS §338.080 so as to preclude exemption of all apprenticeship programs approved by the State Apprenticeship Council. ***It is more consistent with legislative intent to construe N.R.S. §338.080 so as to permit exemption of apprenticeship programs that are***

> ***approved under the Fitzgerald Act Standards and not preempted by ERISA. This necessitates granting the exemption to an apprenticeship program that is certified as meeting those standards by either the BAT or the State Apprenticeship Council.*** (Emphasis supplied). *MacDonald II*, at 15252 (Appendix A).

Through this order, the Ninth Circuit created a revised NRS 338.080(2) that in no way resembles the NRS 338.080(2) the Nevada Labor Commissioner must still attempt to enforce. The Nevada Labor Commissioner is now faced with an insoluble conundrum. He is sworn to uphold and enforce the laws of Nevada, and NRS 338.080(2) as written allows him to exempt from the "prevailing wage" requirements of NRS Chapter 338 only "apprentices recorded under the provisions of chapter 610 of NRS." NRS 338.080(2). On the other hand, if he enforces NRS 338.080(2), he will violate the Ninth Circuit's Order.

The Ninth Circuit's "judicial legislation" is incomplete and does not answer a fundamental question of control. If the strict dictates of the Ninth Circuit's order are followed, the Labor Commissioner must allow ABC apprentices to work on state public works projects at a reduced wage, and yet, because ABC will not actually be approved by the NSAC, the Labor Commissioner will not be able to enforce any of the Nevada Apprentice Act against ABC. Numerous troubling questions arise. What wage rate must be paid to ABC apprentices? What working conditions may be imposed on the apprentices working under the ABC program? What law governs the conduct of the ABC

program? How can NSAC oversee, evaluate, and prosecute, if necessary, any violations?

The conundrum created by the Ninth Circuit's "judicial legislation" is obvious and difficult to all the states who, like Nevada, are attempting to fulfill their duties as they are empowered by the Fitzgerald Act and 29 C.F.R. Part 29. If the Ninth Circuit's ruling is allowed to stand, all states must automatically grant approval to any BAT-approved program that comes before it, even though that BAT-approved program may not satisfy statutory requirements previously approved by the BAT and even though the approval sought is solely for state and local projects. The message to apprenticeship programs is equally clear: apply only to the BAT, and once approved, you can take your program to any state in the country and receive the gift of judicially-created reciprocity. With one misguided swipe, the Ninth Circuit has reduced all thirty extant SACs to mere rubber stamps for the BAT, in direct contravention to the Fitzgerald Act and 29 C.F.R. Part 29.

Put differently, the proper forum for the creation of a federal-state reciprocity is with the Secretary of Labor and the states. Only after due deliberation, only after the states have their say, only after the BAT has its say, only after the affected apprentices and public make their contribution, only after all of these things afforded ***solely*** through the legislative process, should a federal-state reciprocity be created. The proper role of the district court and the Ninth Circuit was to note that legislative remediation might be necessary. Neither the district court, nor the Ninth Circuit, nor, indeed, this Court should usurp the legislative role and judicially write amended state statutes, especially where those state statutes were drafted to address the particular

needs and the particular projects that particularly and only affect a state's individual interests. Only this Court, by granting the writ, can free the Labor Commissioner from the restraints of the "judicial legislation" of the Ninth Circuit.

CONCLUSION

For the above stated reasons, the Nevada Labor Commissioner respectfully requests that this Court grant a writ of certiorari to allow for the reversal of the opinion and order of the Ninth Circuit Court of Appeals.

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELECTRICAL JOINT APPRENTICESHIP COMMITTEE; SIERRA NEVADA CHAPTER ABC APPRENTICESHIP TRUST FUND; ASSOCIATED BUILDERS AND CONTRACTORS, INC., SIERRA NEVADA CHAPTER,
Plaintiffs-Appellees,

v.

FRANK MACDONALD, in his official capacity as the Labor Commissioner of the State of Nevada,
Defendant-Appellant.

No. 90-15095

D.C. No.
CV-89-0409-BRT

ASSOCIATED BUILDERS AND CONTRACTORS, INC., SIERRA NEVADA CHAPTER; ELECTRICAL JOINT APPRENTICESHIP COMMITTEE; SIERRA NEVADA CHAPTER ABC APPRENTICESHIP TRUST FUND,
Plaintiffs-Appellees,

v.

FRANK MACDONALD, Labor Commissioner of the State of Nevada,
Defendant-Appellant.

No. 90-15395

D.C. No.
CV-89-0409-BRT

OPINION

Appeal from the United States District Court
for the District of Nevada
Bruce R. Thompson, District Judge, Presiding

Argued and Submitted
April 8, 1991—San Francisco, California

Filed November 8, 1991

Before: Procter Hug, Jr. and Cecil F. Poole, Circuit Judges, and C. Clyde Atkins,* District Judge.

Opinion by Judge Hug

SUMMARY

ERISA/Labor

Affirming a district court grant of a permanent injunction, the court of appeals held that ERISA preempted the Nevada Labor Commissioner's decision not to exempt from enforcement of Nevada's prevailing wage statute for state public works apprenticeship programs that are federally approved.

The Electrical Joint Apprenticeship Committee sought an injunction to prevent the Nevada Labor Commissioner from enforcing a provision of the Nevada prevailing wage statutes for state public works not exempting federally-approved apprenticeship programs. Electrical argued that the enforcement of the prevailing wage statutes, without allowing for the exemption, was preempted by ERISA. The district court granted a permanent injunction prohibiting the Labor Commissioner from enforcing that provision of the prevailing wage statute so as to deny the exemption to the federally approved program.

[1] Although ERISA preempts state laws relating to

*Honorable C. Clyde Atkins, Senior United States District Judge for the Southern District of Florida, sitting by designation.

employee benefit plans, ERISA has a "savings clause" that exempts federal laws from ERISA preemption. [2] ERISA therefore does not preempt the provisions of the preexisting National Apprenticeship Act, commonly known as the Fitzgerald Act, or the regulations issued thereunder. [3] 29 C.F.R. § 29.3 provides for a dual system of approval and recognition so that either the federal Bureau of Apprenticeship and Training, Employment and Training Administration (BAT) or the State Apprenticeship Council can approve an apprenticeship program for federal purposes. However, either agency is constrained in its approval to apply the requirements and standards of the federal regulations.

[4] Because there is no exemption from the broad preemption provision of section 514(a) of ERISA except for the federal Fitzgerald Act and the regulations issued thereunder, any state regulation of apprenticeship programs that is separate and apart from the authorization given by the Fitzgerald Act and its accompanying regulations is preempted by ERISA. [5] Thus, the decision of the district court to enjoin the Nevada Labor Commissioner from enforcing the state statute in question so as not to exempt the apprenticeship program in question from the provisions of the Nevada prevailing wage statutes was warranted because an order denying the exemption amounted to indirect state regulation of the apprenticeship program. [6] The court noted that it was not declaring the entire Nevada statutory scheme preempted, but rather the Labor Commissioner's intended interpretation and application of it. [7] Because the court affirmed the district court on the ground that the intended action of the Nevada Labor Commissioner was preempted by ERISA, the court did not consider the alternate ground that this action violated the Equal Protection Clause. Therefore, the court vacated that alternate portion of the judgment of the district court.

[8] The court stated that it was more consistent with Nevada legislative intent to construe the statute in question so as to permit exemption of apprenticeship programs that are

approved under the Fitzgerald Act Standards and not preempted by ERISA.

COUNSEL

Robert A. Kirkman, Deputy Attorney General, Carson City, Nevada, for the defendants-appellants.

Mark R. Thierman, Thierman, Cook, Brown & Prager, San Francisco, California, for the plaintiffs-appellees.

Marsha S. Berzon, Altshuler, Berzon, Nussbaum, Berzon & Rubin, San Francisco, California, for the amici.

OPINION

HUG, Circuit Judge:

In this action, the plaintiffs sought an injunction to prevent the Nevada Labor Commissioner from enforcing a provision of the Nevada prevailing wage statutes for state public works. The statutes require that employers contracting for construction on public works projects for any public body in the state agree to pay the prevailing wages in the county in which the public work is located. The statute provides an exemption for apprentice programs approved by the Nevada State Apprenticeship Council, but does not allow such exemption for apprenticeship programs approved by the Bureau of Apprenticeship and Training of the United States Department of Labor.

The plaintiffs contend that the enforcement of the prevailing wage statutes, without allowing an exemption for the apprenticeship program of the plaintiff Associated Builders and Contractors, Inc., Sierra Nevada Chapter ("ABC"), which

had the approval of the federal Bureau of Apprenticeship and Training ("BAT"), was preempted by the Employment, Retirement and Security Act ("ERISA"), 29 U.S.C. § 1144(a), and was also a denial of equal protection under the United States Constitution. The district court granted a permanent injunction enjoining the Labor Commissioner from enforcing that provision of the prevailing wage statute so as to deny the exemption to the federally approved program. We affirm.

I.

The Nevada Revised Statutes ("NRS") §§ 338.010-338.090 are "prevailing wage" statutes, patterned after the Davis-Bacon Act, 40 U.S.C. § 276a-276a-5, which applies to federal public works. The prevailing wage statutes provide that contractors on all public works projects for any public body in the state must agree to pay the prevailing wages in the county in which the public work is located. Failure to do so subjects the contractor to forfeitures and criminal penalties. *See* Nev. Rev. Stat. §§ 338.010-338.090 (1978).

NRS § 338.080 provides, "None of the provisions of NRS 338.010-338.090, inclusive, apply to ... [a]pprentices recorded under the provisions of chapter 610 of NRS." Chapter 610 of NRS provides for state approved apprenticeship programs. NRS § 610.144 of Chapter 610 sets forth statutory standards for eligibility for registration and approval by the State Apprenticeship Council. Among the duties of the State Apprenticeship Council are duties to establish standards for programs that are not lower than the statutory standards and to register and approve or reject proposed programs and standards for apprenticeship. NRS §§ 610.090 and 610.095.

The net effect of NRS § 338.080 and these provisions of Chapter 610 is that, unless an apprenticeship program meets the standards of NRS § 610.144 and those established by the State Apprenticeship Council and also obtains the approval of the State Apprenticeship Council, the contractor will have to

pay the same prevailing wage to apprentices as to journeymen and, thus, will face a significant disincentive to use apprentices on public works jobs.

II.

An unusual procedure was followed in this case, in that counsel stipulated that the court would render the final decision on the basis of the counsels' arguments to the court in lieu of a trial on the merits. On this basis, the district court rendered its findings of fact and conclusions of law and judgment.

The pertinent facts are as follows. Plaintiff ABC is a nonprofit trade association representing contractors who bid and enter into contracts to construct private and public works projects in the State of Nevada. Plaintiff Electrical Joint Apprenticeship Committee ("JAC") is an electrical joint apprenticeship training program approved by the federal BAT.[1] The JAC is sponsored by ABC and is not the product of a collective agreement with any labor organization. The Sierra Nevada Chapter ABC Apprenticeship Trust Fund is an employee benefit trust existing and regulated pursuant to the provisions of ERISA, which was created for the purpose of funding the JAC apprenticeship training programs. Defendant Frank MacDonald is the Labor Commissioner of the State of Nevada and is empowered and required to enforce the provisions of NRS §§ 338.010-338.090.

[1]The amicus curiae brief filed by the Central Valley Electrical Joint Apprenticeship and Training Committee and the Electrical Joint Apprenticeship Committee of San Joaquin and Calaveras Counties maintain that the Joint Apprenticeship Committee was a "training program," not an "apprenticeship program" approved by BAT. However, the district court made a finding of fact that JAC was approved by BAT as an apprenticeship program. This finding is not clearly erroneous and is not contested by defendant MacDonald on appeal.

On November 8, 1984, ABC presented its proposed JAC nonunion electrician apprenticeship standards to the State Apprenticeship Council. The State Apprenticeship Council rejected the proposed apprenticeship standards and refused to approve plaintiffs' application for the apprenticeship program despite the fact that the program already had been approved by the federal BAT. The district court found that no nonunion construction trade apprenticeship program has ever been approved by the Nevada State Apprenticeship Council, although many have applied.

It is conceded that in the enforcement of the prevailing wage statutes defendant MacDonald intends not to apply the apprenticeship exemption prescribed by NRS § 338.080 to the Joint Apprenticeship Committee.

III.

We first consider the issue of preemption by ERISA as held by the district court. ERISA is a "comprehensive remedial statute 'designed to protect the interest of employees in pension and welfare plans, and to protect employers from conflicting and inconsistent state and local regulation of such plans.'" *Local Union 598, Plumbers & Pipefitters Industry Journeymen & Apprentices Training Fund v. J.A. Jones Const. Co.*, 846 F.2d 1213, 1217 (9th Cir. 1988) (*Jones*) (quoting *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1501 (9th Cir. 1985)), *aff'd*, 488 U.S. 881, 109 S. Ct. 210, 102 L. Ed. 2d 202 (1988). ERISA governs "employee benefit plans," 29 U.S.C. § 1001, *et seq.*, which term is statutorily defined to include an "employee welfare benefit plan." 29 U.S.C. § 1002(3). An "employee welfare benefit plan" in turn is defined by ERISA as follows:

> any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program

> was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, *apprenticeship or other training programs,* or day care centers, scholarship funds, or prepaid legal services . . . .

29 U.S.C. § 1002(1) (emphasis added). The ERISA statute also contains a very broad preemption clause, section 514(a), 29 U.S.C. § 1144(a), which was discussed in detail in our recent case *Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Comm.*, 891 F.2d 719 (9th Cir. 1989), *cert. denied,* 111 S. Ct. 72 (1990), where we stated:

> Section 514(a) of ERISA, as codified at 29 U.S.C. § 1144(a), provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 1003(a) of this title. . . ." 29 U.S.C. § 1144(a) (emphasis added). "State laws" are defined as "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1). A "state" is defined as "a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." 29 U.S.C. § 1144(c)(2).

Hydrostorage, 891 F.2d at 726.

[1] Although ERISA preempts state laws relating to employee benefit plans, ERISA has a "savings clause" which serves to exempt federal laws from ERISA preemption. 29

U.S.C. § 1144(d). Section 514(d) of ERISA, codified at 29 U.S.C. § 1144(d), provides that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law."

[2] ERISA therefore did not preempt the provisions of the preexisting National Apprenticeship Act, commonly known as the Fitzgerald Act, 29 U.S.C. § 50, or the regulations issued thereunder. The Fitzgerald Act provides:

> The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship. . . .

29 U.S.C. § 50. The regulations issued in conformance with the Fitzgerald Act are set forth at 29 C.F.R. § 29.1-29.13 (1990). These regulations provide for "a detailed regulatory scheme defining apprenticeship programs and their requirements, and establish a review, approval, and registration process for proposed apprenticeship programs administered by State Apprenticeship Councils under the aegis of the United States Department of Labor. . . ." *Siuslaw Concrete Construction Co. v. Washington, Dept. of Transportation*, 784 F.2d 952, 956 (9th Cir. 1986). The regulations establish the Bureau of Apprenticeship and Training, Employment and Training Administration (heretofore referred to as "the BAT"), for the purpose of administering the registration and approval of apprenticeship programs and other provisions of the regulations. 29 C.F.R. § 29.1. The BAT is authorized to certify apprenticeship standards and to register and approve local

apprenticeship programs and apprenticeship agreements for federal purposes. The regulations also authorize the BAT to approve appropriate state bodies for registration and/or approval of local apprenticeship programs and agreements for federal purposes. 29 C.F.R. § 29.2(o).

[3] 29 C.F.R. § 29.3 provides for a dual system of approval and recognition so that either the BAT or the State Apprenticeship Council can approve an apprenticeship program for federal purposes. However, either agency is constrained in its approval to apply the requirements and standards of the federal regulations.[2] In Nevada, the State Apprenticeship Council is a state agency authorized to approve apprenticeship programs for federal purposes under the provisions of these Fitzgerald Act regulations.

IV.

The basic idea of an apprenticeship program is to allow on-the-job training for apprentices who work under the supervision of journeymen and thus to encourage and assist persons

[2]29 C.F.R 29.3 provides:

> (a) Eligibility for various Federal purposes is conditioned upon a program's conformity with apprenticeship program standards published by the Secretary of Labor in this part. For a program to be determined by the Secretary of Labor as being in conformity with these published standards the program must be registered with the Bureau or registered with and/or approved by a State Apprenticeship Agency or Council recognized by the Bureau. Such determination by the Secretary is made only by such registration.
>
> (b) No apprenticeship program or agreement shall be eligible for Bureau registration unless (1) it is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in 29.4 herein, and (2) it is in conformity with the requirements of the Department's regulation on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 C.F.R. Part 30, as amended.

to enter into the skilled work force throughout the nation. In order for such an apprenticeship program to work, it is essential that the employer be able to pay lesser wages to apprentices while they are in training. Prevailing wage statutes for public works thus present a significant obstacle, unless apprenticeship programs are exempted. As noted by the above quoted regulations, an apprenticeship program can be approved for federal purposes either by the BAT or by a State Apprenticeship Council. Federal purposes include federal public works and public works deriving federal financial assistance. It is important to note that the State agency must apply the same standards as the BAT in approval of these apprenticeship programs.

[4] There is no exemption from the broad preemption provision of section 514(a) of ERISA except for the federal Fitzgerald Act and the regulations issued thereunder. 29 U.S.C. § 1144. Thus, any state regulation of apprenticeship programs that is separate and apart from the authorization given by the Fitzgerald Act and its accompanying regulations is preempted by section 514(a) of ERISA. *Id.*

[5] It is clear that the JAC apprenticeship program, sponsored by ABC and approved by BAT, is an apprenticeship program as defined by ERISA, and thus cannot be regulated by the State apart from its approval functions under the Fitzgerald Act regulations. As we have noted, in order for any apprenticeship program to work effectively, the employer must be able to pay a lesser wage to the apprentices while they are learning their skilled trade. The denial of the exemption to the BAT-approved JAC apprenticeship program, because it was not also approved by the Nevada State Apprenticeship Council, in effect forces ABC's JAC apprenticeship program to comply with the standards of the State Committee, independent and apart from the regulation authorized and provided for by the Fitzgerald Act and its accompanying regulations. The approval of the JAC apprenticeship program by BAT in effect establishes that that program meets the require-

ments of the Fitzgerald Act, the only apprenticeship regulations that are permissible as not being preempted by section 514(a) of ERISA. Any state regulation inconsistent with that determination is preempted by section 514(a) of ERISA. Thus, the decision of the district court in enjoining the Nevada Labor Commissioner from enforcing NRS § 338.080, so as not to exempt the JAC apprenticeship program from the provisions of the Nevada prevailing wage statutes, is warranted because an order denying the exemption amounts to indirect State regulation of the apprenticeship program.[3]

[6] We thus have a state law within the meaning of ERISA, 1144(c)(1), that requires the proposers of an apprenticeship program to comply with state standards apart from those set forth in the non-preempted Fitzgerald regulations. To be preempted under ERISA, a state law must both "relate to" and "purport to regulate" directly or indirectly an employee welfare benefit plan. *Hydrostorage*, 891 F.2d at 729; *Jones*, 846 F.2d at 1218. "A law 'purports to regulate' a plan if it attempts 'to reach in one way or another the terms and conditions of employee benefit plans.' " *Jones*, 846 F.2d at 1218 (quoting *Lane v. Goren*, 743 F.2d 1337, 1339 (9th Cir. 1984)). The intended action of the Nevada Labor Commissioner to deny the exemption of the JAC apprenticeship program because it had not obtained the approval of the State agency is an interpretation of a law that compels preemption. Just as our opinion in *Hydrostorage* did not declare the entire California statutory provision preempted but, instead, the administrative application of that provision preempted, so we do not conclude NRS § 338.080 preempted, but rather the Labor Commissioner's intended interpretation and application of it.

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[3]The contention that the Fitzgerald Act itself preempts state regulation has been foreclosed by our decision in *Siuslaw Concrete Const. v. Washington Dept. of Transp.*, 784 F.2d 952, 956-58 (9th Cir. 1986). The preemption is by operation of ERISA, which permits an exemption for programs regulated under the Fitzgerald Act but does not permit independent state regulation.

A situation analogous to that in Nevada was encountered in the state of Minnesota. There, the state agency had required an apprenticeship program to comply with a prescribed ratio of apprentices to journeymen pipefitters. The court stated that the minimum jobsite rule affected employee benefit plans and therefore held the state requirement to be preempted. *See Boise Cascade Corp. v. Peterson*, No. 90-5238 (8th Cir. filed July 29, 1991).

[7] Because we affirm the district court on the ground that the intended action of the Nevada Labor Commissioner under NRS § 338.080 is preempted by ERISA, we need not consider the alternate ground that this action violates the Equal Protection Clause of the United States Constitution. We therefore vacate that alternate portion of the judgment of the district court. We affirm the judgment of the district court, which states as follows:

> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
>
> (1) defendant Frank MacDonald, in his official capacity as Labor Commissioner of the State of Nevada, and his successors, assigns, agents, employees and all officers of the Labor Commissioner of the State of Nevada, are hereby enjoined and restrained from enforcing the provisions of the Labor and Industrial Relations Code § 338.080 of the Nevada Revised Statutes (NRS) against plaintiffs Associated Builders and Contractors, Inc., Sierra Nevada Chapter; Electrical Joint Apprenticeship Committee; Sierra Nevada Chapter ABC Apprenticeship Trust Fund, and all employers who are utilizing the apprentice program of the Electrical Joint Apprenticeship Committee, with regard to wages paid to any employee enrolled or indentured as an apprentice in the program.

Paragraph 2 of that Order which relates to the Equal Protection Clause is vacated for the reasons above stated. The effect of the injunction is to require the Nevada Labor Commissioner to exempt apprenticeship programs approved by either the BAT or the State Apprenticeship Council as complying with the standards of the Fitzgerald Act and the regulations issued thereunder.

The only State regulation of apprenticeship programs permitted by ERISA is in the application of the standards of the regulations issued under the Fitzgerald Act. Those regulations permit alternate avenues for the approval of apprenticeship programs. BAT approval is equivalent to state approval of the apprenticeship program as meeting those standards. Thus, if the exemption of NRS § 338.080 is to apply at all, it must apply to programs that are approved by either BAT or the State Apprenticeship Council.

[8] We are confident that it would be contrary to Nevada legislative intent to construe NRS § 338.080 so as to preclude exemption of all apprenticeship programs approved by the State Apprenticeship Council. It is more consistent with legislative intent to construe N.R.S. § 338.080 so as to permit exemption of apprenticeship programs that are approved under the Fitzgerald Act Standards and not preempted by ERISA. This necessitates granting the exemption to an apprenticeship program that is certified as meeting those standards by either the BAT or the State Apprenticeship Council.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

ASSOCIATED BUILDERS AND CONTRACTORS, INC. SIERRA NEVADA CHAPTER; ELECTRICAL JOINT APPRENTICESHIP COMMITTEE; SIERRA NEVADA CHAPTER ABC APPRENTICESHIP TRUST FUND,	)	No. CV-N-89-409
Plaintiffs,	)	
vs.	)	
FRANK MacDONALD, in his Official Capacity as the Labor Commissioner of the State of Nevada,	)	
Defendant.	)	

December 22, 1989.
As Amended February 28, 1990.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

BRUCE R. THOMPSON, District Judge.

This is an action to enjoin enforcement against the plaintiffs of a Nevada statute, NRS 338.080, the effect of which is to require the compliance by contractors performing public works with the state prevailing wage law (NRS 338.010-338.090) with respect to apprentices unless the apprenticeship training program is approved by the Nevada State Apprenticeship Council.

Plaintiff Sierra Nevada Chapter of the Associated Builders and Contractors, Inc. (ABC Sierra Nevada) is a non-profit trade association, incorporated in Nevada, which represents contractors who bid on and perform private and public works projects in Nevada. ABC Sierra Nevada is not signatory to any labor or collective bargaining agreement and does not represent its members in collective bargaining. Plaintiff Electrical Joint Apprenticeship Committee (JAC) is an employee benefit trust fund existing and regulated pursuant to the provisions of the Employee Retirement Income Security Act, 29 U.S.C. 1001, *et seq.*, hereinafter referred to as ERISA.

The JAC program is sponsored by plaintiff ABC Sierra Nevada, and it is not the product of a collective bargaining agreement with any labor organization.

Plaintiff Sierra Nevada Chapter ABC Apprenticeship Trust Fund (trust fund) is also an employee benefit trust existing and regulated pursuant to the provisions of ERISA, 29 U.S.C. §1001, *et seq.* Created December 5, 1984 for the purpose of funding bona fide apprenticeship training programs to assist in the training and development of individuals who desire to acquire skills as employees within the construction industry, the trust fund acts as the funding mechanism for plaintiff JAC.

Defendant Frank MacDonald is the Labor Commissioner for the State of Nevada. The Nevada Labor

commissioner is empowered to enforce the provisions of the Nevada prevailing wage statutes, NRS §§338.010, *et seq.*, relating to the payment of wages on public works projects pursuant to NRS §338.015. The Labor Commissioner is also *ex officio* the secretary of the Nevada State Apprenticeship Council (SAC), pursuant to NRS §610.060, and is authorized to appoint members of the Nevada State Apprenticeship Council pursuant to NRS §610.030.

In 1984, ABC Sierra Nevada developed apprenticeship training standards for electrical apprentices in cooperation with the Bureau of Apprenticeship and Training (BAT) of the United States Department of Labor. The electrical apprenticeship program has operated with BAT approval, supplying apprentices to members/contractors of ABC Sierra Nevada doing electrical work, since that time.

On November 8, 1984, ABC Sierra Nevada presented it proposed non-union electrician apprenticeship standards to the Nevada State Apprenticeship Council (SAC). The SAC rejected the proposed apprenticeship standards on November 29, 1984, and refused to approve plaintiff's application for an apprenticeship program, despite the fact that the program already had been approved by BAT. The ABC JAC is a non-union apprenticeship program. No non-union construction trade apprenticeship program has ever been approved by the Nevada State Apprenticeship Council, although many have applied.

The federal statute relating to apprenticeship programs is refreshingly short. 29 U.S.C. §50 provides:

> The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by

> encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the department of Health, Education, and Welfare in accordance with section 17 of Title 20. For the purposes of this chapter the term 'State' shall include the District of Columbia.

The regulations flowing from this statutory authority reflect the need for recognition and cooperation with state apprenticeship programs as well as the promotion of federal activity in the area. The existence of dual control is recognized in the following selected passages from the regulations:

> 29 C.F.R. §29.1(b).
>
> The purpose of this part is to set forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, or [of] acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation and deregistration or apprenticeship programs and of apprenticeship agreements; the recognition of

a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matter relating thereto.

29 C.F.R. §29.2(l).

'Registration of an apprenticeship program' shall mean the acceptance and recording of such program by the Bureau of Apprenticeship and Training, or registration and/or approval by a recognized State Apprenticeship Agency, as meeting the basic standards and requirements of the Department for approval of such program for Federal purposes. Approval is evidence by a Certificate of Registration or other written indicia.

29 C.F.R. §29.3(a).

Eligibility for various Federal purposes is conditioned upon a program's conformity with apprenticeship program standards published by the Secretary of Labor in this part. For a program to be determined by the Secretary of Labor as being in conformity with these published standards the program must be registered with the Bureau or registered with and/or approved by a State apprenticeship Agency or Council recognized by the Bureau. Such determination by the Secretary is made only by such registration.

29 C.F.R. §29.3(f).

Operating apprenticeship programs when approved by the Bureau shall be

accorded registration evidenced by a Certificate of Registration. Programs approved by recognized State Apprenticeship Agencies shall be accorded registration and/or approval evidenced by a similar certificate or other written indicia. When approved by the Bureau, national apprenticeship standards for policy or guideline use shall be accorded certification, evidence by a certificate attesting to the Bureaus' approval.
29 C.F.R. §29.12(a).

The Secretary's recognition of a State Apprenticeship Agency or Council (SAC) gives the SAC the authority to determine whether an apprenticeship program conforms with the Secretary's published standards and the program is, therefore, eligible for those Federal purposes which require such a determination by the Secretary....
29 C.F.R. §29.30(1).

This part sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and in state apprenticeship programs registered with recognized state apprenticeship agencies. These policies and procedures apply to the recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures established provide for review of apprenticeship programs, for registering apprenticeship

> programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of state agencies for registering of apprenticeship programs for Federal purposes. The purpose of this part is to promote equality of opportunity in apprenticeship b prohibiting discrimination based on race, color, religion, national origin, or sex in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating this part with other equal opportunity programs.

It seem obvious to this court that the foregoing law ad regulations provide for a dual system of apprenticeship programs, programs authorized by BAT and programs authorized by SAC. The state law governing wages on public works in Nevada, however, allows apprenticeship wages only for apprenticeship programs authorized by SAC. Inasmuch as the general field of apprenticeship training has been preempted by the Fitzgerald Act (29 U.S.C. §50 *et seq.*) and the delegation of authority to state apprenticeship councils is controlled by federal law, state laws affecting wages paid to apprentices must apply equally to BAT approved and SAC approved apprenticeship programs. A state law which grants a significant benefit only to SAC approved programs is discriminatory and unconstitutional.

The argument for preemption in these circumstances seems to us to be substantially supported by *Wisconsin Dept. of Industry v. Gould, Inc.*, 475 U.S. 282, 106 S.Ct. 1057, 89 L.Ed.2d 223 (1986). There a state statute which

prohibited the state from purchasing any product from a seller known to have violated the NLRB in three or more adjudicated cases was held unconstitutional and preempted by the National Labor Relations Act. After thorough discussion the court concluded:

> We are not faced here with a statute that can even plausibly be defended as a legitimate response to state procurement constraints or to local economic needs, or with a law that pursues a task Congress intended to leave to the States. The manifest purpose and inevitable effect of the debarment rule is to enforce the requirements of the NLRA. That goal may be laudable, but it assumes for the State of Wisconsin a role Congress reserved exclusively for the Board.

So here. No legitimate state interest has ben suggested for treating federally approved apprenticeship programs. The wage scale of apprentices employed on public contracts is of seminal importance to both contracting parties and to the employees. NRS 338.080(2) exempting from the requirements of the prevailing wage law only: "Apprentices recorded under the provisions of Chapter 610 of NRS" cannot be sustained.

Plaintiffs' principle contention is that any state regulation of a federally approved apprenticeship program is preempted by ERISA because plaintiff JAC is an employee benefit trust fund and plaintiff ABC Sierra Nevada apprenticeship trust fund is an employee benefit trust fund established pursuant to 29 U.S.C. §1002(1). Prime support for this argument is found in *Hydrostorage, Inc. v. Northern California Boilermakers*, 685 F.Supp. 718 (N.D.Cal. 1988), affirmed 891 F.2d 719 (9th Cir. 1989). ERISA's

preemption clause preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. §1144(a).

The apprenticeship standards for electrical construction adopted by the Sierra Nevada Chapter of Associated Contractors and Builder, Inc. in cooperation with BAT, provides in section XX on page 10, a specific schedule of apprentice wages. These standards were approved by BAT. The Nevada statute at issue, NRS 338.080, is directly inconsistent with these standards and thus is preempted under the authority of the *Hydrostorage* case.

At the hearing held October 20, 1989, the parties stipulated that the hearing on the motion for preliminary injunction be telescoped with the final trial. Accordingly, this is a final decision and judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(1) defendant Frank MacDonald, in his official capacity as Labor Commissioner of the State of Nevada, and his successors, assignees, agents, employees and all officers of the Labor Commissioner of the State of Nevada, are hereby enjoined and restrained from enforcing the provision of the Labor and Industrial Relations Code §338.080 of the Nevada Revised Statutes (NRS) against plaintiffs Associated Builders and Contractors, Inc., Sierra Nevada Chapter; Electrical Joint Apprenticeship Committee; Sierra Nevada Chapter ABC Apprenticeship Trust Fund, and all employers who are utilizing the apprentice program of the Electrical Joint Apprenticeship Committee, with regard to wages paid to any employee enrolled or indentured as an apprentice in the program; and

(2) the provisions of NRS 338.080 are unconstitutional on their face and as applied to plaintiffs herein, and all other similarly situated apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training, and not approved by the State of Nevada pursuant to NRS 610.010, *et seq.*

APPENDIX C

29 U.S.C. §§1144(a) and (d)

(a) Supersedure; effective date. Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

***

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited. Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

50 U.S.C. §50

The Secretary of Labor is hereby authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the National Youth Administration and with the Office of Education in the Department of the Interior Agency in accordance with section 6 of the Act of february 23, 1917 (39 Stat. 932), as amended

by Executive Order Numbered 6166, June 10, 1933, issued pursuant to an Act of June 30, 1932 (47 Stat. 414), as amended. For the purposes of this Act the term "State" shall include the District of Columbia.

Selected Portions of 29 C.F.R. Part 29

29 C.F.R. §29.1(b).

(b) The purpose of this part is to set forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, or acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation and deregistration or apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes and matters relating thereto.

29 C.F.R. §29.2(o).

(o) *Recognized State Apprenticeship Agency or recognized State Apprenticeship Council* shall mean an organization approved by the Bureau as an agency or council which has been properly constituted under and acceptable law or Executive order, and has been approved by the Bureau as the appropriate body for State registration and/or

approval of local apprenticeship programs and agreements for Federal purposes.

29 C.F.R. §29.12.

(a) The Secretary's recognition of a State Apprenticeship Agency or Council (SAC) gives the SAC the authority to determine whether an apprenticeship program conforms with the Secretary's published standards and the program is, therefore, eligible for those Federal purposes which require such a determination by the Secretary. Such recognition of a SAC shall be accorded by the Secretary upon submission and approval of the following:

(1) An acceptable State apprenticeship law (or Executive order), and regulations adopted pursuant thereto;

(2) Acceptable composition of the State Apprenticeship Council (SAC);

(3) An acceptable State Plan for Equal Employment Opportunity in Apprenticeship;

(4) A description of the basic standards, criteria, and requirements for program registration and/or approval; and

(5) A description of policies and operating procedures which depart from or impose requirements in addition to those prescribed in this part.

(b) *Basic requirements.* Generally the basic requirements under the matters covered in paragraph (a) of this section shall be in conformity with applicable requirements as set forth in this part. Acceptable State provisions shall:

(1) Establish the apprenticeship agency in: (i) The State Department of Labor, or (ii) in that agency of State government having jurisdiction of laws and regulations governing wages, hours, and working conditions, or (iii)

that State agency presently recognized by the Bureau, with a State official empowered to direct the apprenticeship operation;

(2) Require that the State Apprenticeship Council be composed of persons familiar with apprenticeable occupations and an equal number of representatives of employer and of employee organizations and may include public members who shall not number in excess of the number named to represent either employer or employee organizations. Each representative so named shall have one vote. Ex officio members may be added to the council but they shall have no vote except where such members have a vote according to the established practice of a presently recognized council. If the State official who directs the apprenticeship operation is a member of the council, provision may be made for the official to have a tie-breaking vote;

(3) Clearly delineate the respective powers and duties of the State official and of the council;

(4) Clearly designate the officer or body authorized to register and deregister apprenticeship programs and agreements;

(5) Establish policies and procedures to promote equality of opportunity in apprenticeship programs pursuant to a State Plan for Equal Employment Opportunity in Apprenticeship which adopts and implements the requirements of 29 CFR part 30, as amended, and to require apprenticeship programs to operate in conformity with such State Plan and 29 CFR part 30, as amended;

(6) Prescribe the contents of apprenticeship agreements;

(7) Limit the registration of apprenticeship programs to those providing training in *apprenticeable* occupations as defined in §29.4;

(8) Provide that apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of this part by any recognized State Apprenticeship Agency/Council or by the Bureau, shall be accorded registration or approval reciprocity by any other State Apprenticeship Agency/Council or office of the Bureau if such reciprocity is requested by the sponsoring entity;

(9) Provide for the cancellation, deregistration and/or termination of approval of programs, and for temporary suspension, cancellation, deregistration and/or termination of approval of apprenticeship agreements; and

(10) Provide tat under a program proposed for registration by an employer or employers' association, and where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive mattes of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or *no objection* to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The State agency shall provide a reasonable time period of not less than 30 days nor more than 60 days for receipt of union comments, if any, before final action on the application for registration and/or approval.

(c) *Application for recognition.* A State apprenticeship Agency/Council desiring recognition shall submit to the Administrator, BAT, the documentation specified in §29.12(a) of this part. A currently recognized Agency/Council desiring continued recognition by the Bureau shall submit to the Administrator the documentation specified in §29.12(a) of this on or before July 18, 1977. An extension of time within which to comply with the requirements of this part may be granted by the Administrator for good cause upon written request by the State agency but the Administrator shall not extend the time for submission of the documentation required by §29.12(a). The recognition of currently recognized Agencies/Councils shall continue until July 18, 1977 and during any extension period granted by the Administrator.

(d) *Appeal from denial of recognition.* The denial by the Administrator of a State agency's application for recognition under this part shall be in writing and shall set forth the reasons for the denial. The notice of denial shall be sent to the applicant by certified mail, return receipt requested. The applicant may appeal such a denial to the Secretary by mailing or otherwise furnishing to the Administrator, within 30 days of receipt of the denial, a notice of appeal addressed to the Secretary and setting forth the following items:

(1) A statement that the applicant appeals to the Secretary to reverse the Administrator's decision to deny its application;

(2) The date of the Administrator's decision and the date the applicant received the decision;

(3) A summary of the reasons why the applicant believes that the Administrator's decision was incorrect;

(4) A copy of the application for recognition and subsequent modifications, if any;

(5) A copy of the Administrator's decision of denial. Within 10 days of receipt of a notice of appeal, the Secretary shall assign an Administrative Law Judge to conduct hearings and to recommend findings of fact and conclusions of law. The proceedings shall be informal, witnesses shall be sworn, and the parties shall have the right to counsel and of cross-examination.

The Administrative Law Judge shall submit the recommendations and conclusions, together with the entire record to the Secretary for final decision. The Secretary shall make his final decision in writing within 30 days of the Administrative Law Judge's submission. The Secretary may make a decision granting recognition conditional upon the performance of one or more actions by the applicant. In the event of such a conditional decision, recognition shall not be effective until the applicant has submitted to the Secretary evidence that the required actions have been performed and the Secretary has communicated to the applicant in writing that he is satisfied with the evidence submitted.

(e) *State apprenticeship programs.* (1) An apprenticeship program submitted for registration with a State Apprenticeship Agency recognized by the Bureau shall, for Federal purposes, be in conformity with the State apprenticeship law, regulations, and with the State Plan for Equal Employment Opportunity in Apprenticeship as submitted to and approved by the Bureau pursuant to 29 CFR 30.15, as amended.

(2) In the event that a State Apprenticeship Agency is not recognized by the Bureau for Federal purposes, or that such recognition has been withdrawn, or if no State

Apprenticeship Agency exists, registration with the Bureau may be requested. Such registration shall be granted if the program is conducted, administered and operated in accordance with the requirements of this part and the equal opportunity regulation in 29 CFR part 30, as amended.

29 C.F.R. §29.13.

The recognition for Federal purposes of a State Apprenticeship Agency of State Apprenticeship Council (hereinafter designated *respondent*), may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of this part. Derecognition proceedings for reasonable cause shall be instituted in accordance with the following:

(a) Derecognition proceedings for failure to adopt or properly enforce a State Plan for Equal Employment Opportunity in Apprenticeship shall be processed in accordance with the procedures prescribed in 29 CFR 30.15.

(b) For causes other than those under paragraph (a) above, the Bureau shall notify the respondent and appropriate State sponsors in writing, by certified mail, with return receipt requested. The notice shall set forth the following:

(1) That reasonable cause exists to believe that the respondent has failed to fulfill or operate in conformity with the requirements of this part;

(2) The specific areas of nonconformity;

(3) The needed remedial measures; and

(4) That the Bureau proposes to withdraw recognition for Federal purposes unless corrective action is taken or a hearing request mailed, within 30 days of the receipt of the notice.

(c) If, within the 30-day period, respondent:

(1) Complies with the requirements, the bureau shall so notify the respondent and State sponsors, and the case shall be closed;

(2) Fails to comply or to request a hearing, the Bureau shall decide whether recognition should be withdrawn. If the decision is in the affirmative, the Administrator shall forward al pertinent data to the Secretary, together with the findings and recommendation. The Secretary shall make the final decision, based upon the record before him.

(3) Requests a hearing, the Administrator shall forward the request to the Secretary, and the procedures under §29.9 shall be followed, with notice thereof to the State apprenticeship sponsors.

(d) If the Secretary determines to withdraw recognition for Federal purposes, he shall notify the respondent and the State sponsors of such withdrawal. The notice to the sponsors shall state that, 30 days after the date of the Secretary's order withdrawing recognition of the State agency, the Department shall cease to recognize, for Federal purposes, each apprenticeship program registered with the State agency unless, within that time, the State sponsor requests registration with the Bureau. The Bureau may grant the request for registration contingent upon its finding that the State apprenticeship program is operating in accordance with the requirements of this part and of 29 CFR part 30, as amended. The Bureau shall make a finding on this issue within 30 days of receipt of the request. If the finding is in the negative, the State sponsor shall be notified in writing that the contingent Bureau registration has been revoked. If the finding is in the affirmative, the State sponsor shall be

notified in writing that the contingent Bureau registration is made permanent.

(e) If the sponsor fails to request Bureau registration, or upon a finding of noncompliance pursuant to a contingent Bureau registration, the written notice to such State sponsor shall further advise the recipient that any actions or benefits applicable to recognition *for Federal purposes* are no longer available to participants in its apprenticeship program.

(f) Such notice shall also direct the State sponsor to notify, within 15 days, all its registered apprentices of the withdrawal of recognition for Federal purposes; the effective date thereof; and that such withdrawal removes the apprentice from coverage under any Federal provision applicable to his/her individual registration under a program recognized or registered by the Secretary of Labor for Federal purposes.

(g) A State Apprenticeship Agency or Council whose recognition has been withdrawn pursuant to this part may have its recognition reinstated upon presentation of adequate evidence that it has fulfilled, and is operating in accordance with, the requirements of this part.

42 Federal Register at 10139, paragraph 8

8. Several persons believed that the requirements contained throughout § 29.12 represent an unwarranted intrusion of Federal control into the operations of the SACs. The Department believes that this conclusion is not correct.

As far as the Department knows, the recognized SACs are already in substantial conformity with the minimum standards set forth in this § with the exception of paragraphs (b)(8) and (b)(10), which have been addressed

earlier. Where they are not, paragraph (c) affords the State a 120-day period within which to conform. An extension of time may be granted by the Administrator of the Bureau for good cause.

It does not seem to the Department that it will be an undue hardship for the SACs to conform to the minimal requirements set forth in this part or to provide to the Department the information required by § 29.12(a), since recognition by the Secretary has important economic effects (as in the operation of the Davis-Bacon Act and the Service Contract Act) and important effects in promoting and improving the apprenticeship system. For these reasons it seems reasonable to the Department that the Secretary have documentary evidence that a recognized State agency is conforming to the minimum standards set forth in this part.

Some persons have read §29.12(a)(5) in a manner which does not appear justified by the text. It requires a SAC to submit to the Bureau "a description of policies and operating procedures which depart from or impose requirements in addition to those prescribed in this part." While the Bureau has the right to approve or disapprove such variations, the purpose of this provision is not to enable the Bureau to control SACs or to dictate policies and procedures. Rather, it allows the Secretary to be informed of the policies and procedures of the SACs to which the Secretary has accorded recognition. The Department can then make its own judgment on whether these policies and procedures conflict with the requirements of this part.

NRS 338.080

Exemptions. None of the provisions of NRS 338.020 to 338.090, inclusive, apply to:

1. Any work, construction, alteration, repair or other employment performed, undertaken, or carried out, by or for any railroad company or any person operating the same, whether such work, construction, alteration or repair is incident to or in conjunction with a contract to which this state or any of its political subdivisions is a party, or otherwise.

2. Apprentices recorded under the provisions of chapter 610 of NRS.

3. Any contract for a public work whose cost is less than $100,000. A unit of the project must not be separated from the total project, even if that unity is to be completed at a later time, in order to lower the cost of the project below $100,000.

No. 91-1416

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

FRANK MacDONALD, in His Official Capacity as the Labor Commissioner of the State of Nevada,

Petitioner,

v.

ASSOCIATED BUILDERS AND CONTRACTORS, INC., SIERRA NEVADA CHAPTER; ELECTRICAL JOINT APPRENTICESHIP COMMITTEE; SIERRA NEVADA CHAPTER ABC APPRENTICESHIP TRUST FUND,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. DID THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CORRECTLY RULE UNCONSTITUTIONAL NEVADA REVISED STATUTE SECTION 338.080(2), BECAUSE IT GRANTS AN EXEMPTION TO CONTRACTORS PAYING THE APPLICABLE PREVAILING JOURNEYMAN WAGE RATE TO APPRENTICES EMPLOYED ON A NEVADA PUBLIC WORKS PROJECT IF AN APPRENTICE IS INDENTURED IN A STATE APPROVED APPRENTICESHIP PROGRAM, BUT NOT IF THE APPRENTICE IS INDENTURED IN AN APPRENTICESHIP PROGRAM APPROVED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF APPRENTICESHIP AND TRAINING.

2. DOES THE EMPLOYEE RETIREMENT INCOME SECURITY ACT, 29 U.S.C. § 1001 ET SEQ. (ERISA) PREEMPT STATE REGULATION OF APPRENTICESHIP AND SIMILAR TRAINING PROGRAMS UNLESS SUCH REGULATION IS CONSISTENT WITH THE NATIONAL APPRENTICESHIP (FITZGERALD) ACT, 29 U.S.C. § 50.

3. DOES THE FITZGERALD ACT, 29 U.S.C. § 50 AND THE REGULATIONS AT 29 C.F.R. §§ 29-30 PREEMPT INCONSISTENT STATE REGULATION OF APPRENTICESHIP AND SIMILAR TRAINING PROGRAMS WHERE THE STATE HAS VOLUNTARILY AGREED TO IMPLEMENT THE REGULATIONS AND HAS BECOME A STATE APPRENTICESHIP ("SAC") STATE, 29 C.F.R. § 29.12(a).

LIST OF PARTIES

1. The names of the parties to this proceeding are those contained in the caption to this case.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES BELOW..... ii

OPINIONS BELOW..... 1

JURISDICTION..... 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE..... 1

REASONS FOR DENYING THE WRIT 6

1. NRS § 338.080 CLEARLY RELATES TO AND REGULATES AN ERISA EMPLOYEE WELFARE BENEFIT PLAN AND IS THUS SUBJECT TO PRE-EMPTION..... 8

2. THE SAVINGS CLAUSE OF ERISA ONLY APPLIES WHEN STATE APPRENTICESHIP COUNCILS ARE ACTING WITHIN THE AUTHORITY OF THE FITZGERALD ACT.... 13

3. THE NINTH CIRCUIT'S DECISION WAS APPROPRIATE BECAUSE THE NATIONAL NEED FOR APPRENTICESHIP TRAINING MUST TAKE PRECEDENCE OVER THE DESIRES OF CAPTIVE STATE AGENCIES TO PROTECT EXISTING PROGRAMS..... 19

CONCLUSION 23

TABLE OF AUTHORITIES

Page

CASES

Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) 8

Associated Builders & Contractors v. MacDonald, 731 F.Supp. 966 (D. Nev. 1989) 3, 12, 21

Boise Cascade Corp. v. Peterson, 939 F.2d 632 (8th Cir. 1991) 10, 12

Electrical Joint Apprenticeship Committee v. MacDonald, 949 F.2d 270 (9th Cir. 1991) 1, 10, 14, 16, 19

FMC Corp v. Holliday, 498 U.S. ___, 112 L.Ed.2d 356 (1990) 9

General Electric Company v. New York State Dept. of Labor, 936 F.2d 1448 (2nd Cir. 1991) 16, 17

Huhn v. Ross, 14 Empl. Prac. Dec. (CCH) ¶ 7641 (E.D.N.Y. 1977) 21

Hydrostorage v. Northern Cal. Boilermakers, 891 F.2d 719 (9th Cir. 1989) cert. den. ___ U.S. ___, 111 S. Ct. 72, 112 L.Ed.2d 46 (1990) 5, 10, 14, 16, 19

Hydrostorage, Inc. v. Northern Cal. Boilermakers, 685 F. Supp. 718 (N.D. Cal. 1988), aff'd 891 F.2d 719 (9th Cir. 1989) 5

Ingersoll-Rand v. McClendon, 498 U.S. ___, 112 L.Ed.2d 474 (1990) 9

Local Union 598 v. J.A. Jones Constr. Co., 846 F.2d 1213 (9th Cir. 1988), aff'd 488 U.S. 881 (1988) 8

Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983) 13

TABLE OF AUTHORITIES – Continued

Page

Southern Cal. Ch. of Associated Builders etc. Com. v. California Apprenticeship Council, 1 Cal. App. 4th 517 (1991) (Appeal pending before the California Supreme Court on the Issue of ERISA Preemption) 21, 22

Washington State Elec. Contractors v. Forrest, 930 F.2d 736 (9th Cir. 1991) 20

STATUTES

28 U.S.C. § 2101 1

29 U.S.C. § 1001 ..... 2, 6, 21

29 U.S.C. § 1144(a) 6, 7, 10, 13

29 U.S.C. § 1144(c)(1) 9

29 U.S.C. § 1144(d) 6, 13

29 U.S.C. § 50 ..... 3, 6

29 U.S.C. § 1002(1) 6, 9, 10

42 U.S.C. § 1983 2

California Labor Code § 1777.5 14

California Labor Code § 3070 20

NRS § 338.010 ..... 2, 3

NRS § 338.015 3

NRS § 338.080 ..... *passim*

NRS § 338.080(2) 18

NRS § 610, *et seq* 9, 10, 11, 18

TABLE OF AUTHORITIES – Continued

Page

NRS § 610.010 (1986) 19
NRS § 610.010 (Supp. 1989) 19
NRS § 610.030 ..... 3, 20
NRS § 610.060 3

REGULATIONS

29 C.F.R. § 29 ..... 3, 16, 17
29 C.F.R. § 29.1 ..... 15, 16
29 C.F.R. § 29.2(k) 7
29 C.F.R. § 29.3(a) 17
29 C.F.R. § 29.12(a) 7, 17, 18
29 C.F.R. § 29.12(a)(5) 17
29 C.F.R. § 29.12(b)(2) 20
29 C.F.R. § 29.12(e) 17
29 C.F.R. § 29.12(k) 18
29 C.F.R. § 29.13 4
29 C.F.R. § 29.13(a) 15
29 C.F.R. §§ 29-30 ..... 4, 6, 7, 11, 18

OPINIONS BELOW

The relevant opinions are set forth at page 2 of Petitioner MacDonald's Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit ("Petition"). The opinion of the Ninth Circuit Court of Appeals ("MacDonald II") has been published in the official reporter as *Electrical Joint Apprenticeship Committee v. MacDonald*, 949 F.2d 270 (9th Cir. 1991).

JURISDICTION

The relevant jurisdictional history is set forth at Petition, page 2. The Petition was received on February 5, 1992. This opposition is timely filed under 28 U.S.C. § 2101 and Rule 12 of the Court.

STATUTES INVOLVED

The relevant statutory provisions are set forth at Petition, page 2, and Petition's Appendix at C-1. In addition, Section 610 of the Nevada Revised Statutes is set forth in Appendix A hereto. A copy of the Associated Builders and Contractors' BAT Approved National Standards for Electrician Apprentices is attached as Appendix B.

STATEMENT OF THE CASE

On July 21, 1989, Respondents Associated Builders and Contractors, Inc., Sierra Nevada Chapter, Electrical

Joint Apprenticeship Committee, and Sierra Nevada Chapter ABC Apprenticeship Trust Fund filed a complaint in the United States District Court, District of Nevada, pursuant to 42 U.S.C. § 1983, against Frank MacDonald, in his official capacity as Labor Commissioner for the State of Nevada, to enjoin discriminatory application of the prevailing wage laws, Nevada Revised Statutes ("NRS") § 338.010 *et seq.* against Respondents' federally approved apprenticeship program. Respondents based their complaint on federal preemption of State regulation of Apprenticeship Programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training ("BAT"), pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and violation of the Equal Protection Clause of the United States Constitution (U.S. Const. amend. XIV, § 2) for granting state approved programs privileges while not granting these same privileges to federally approved programs.

The facts are not disputed. NRS § 338.080 provides that licensed construction contractors are exempt from paying the prevailing journeyman wage rate to apprentices employed on a Nevada public works projects if an apprentice is indentured in a state approved apprenticeship program. The Nevada Apprentice Act, NRS Chapter 610, governs apprenticeship, the Nevada State Apprenticeship Council ("NSAC"), and NSAC approval of apprenticeship training programs. Although statutory criteria for state approval of an apprenticeship program is substantially identical to the criteria published by the United States Department of Labor, Bureau of Apprenticeship and Training ("BAT") for federal approval under

the National Apprenticeship (Fitzgerald) Act, 29 U.S.C. § 50, and its implementing regulations, 29 C.F.R. § 29 *et seq.*, at the time this action was brought, no non-union construction trade apprenticeship program had ever been approved by the NSAC, although many applied. NSAC could not articulate a rule or reason for this de facto rejection of all non-union programs. *Associated Builders & Contractors v. MacDonald*, 731 F.Supp. 966, 967 ("MacDonald I").

Petitioner Frank MacDonald is the Labor Commissioner for the State of Nevada. The Nevada Labor Commissioner is empowered to enforce the provisions of the Nevada prevailing wage statutes, NRS § 338.010, *et seq.*, relating to the payment of wages on public works projects pursuant to NRS § 338.015. The Labor Commissioner is also *ex officio* the secretary of the NSAC, pursuant to NRS § 610.060, and is authorized to appoint members of NSAC pursuant to NRS § 610.030.

Respondent Sierra Nevada Chapter of the Associated Builders and Contractors, Inc. (ABC Sierra Nevada) is a nonprofit trade association, incorporated in Nevada, which represents contractors who bid on and perform private and public works projects in Nevada. ABC Sierra Nevada is not signatory to any labor or collective bargaining agreement and does not represent its members in collective bargaining. Respondent Electrical Joint Apprenticeship Committee (JAC) is an employee benefit program existing and regulated pursuant to the provisions of the ERISA. The JAC program is sponsored by Plaintiff ABC Sierra Nevada, and it is not the product of a collective bargaining agreement with any labor organization. Respondent Sierra Nevada Chapter ABC Apprenticeship Trust Fund is also an employee benefit plan

existing and regulated pursuant to the provisions of ERISA, created for the purpose of funding the JAC.

In 1984, ABC Sierra Nevada developed apprenticeship training standards for the electrical trade in cooperation with BAT. Subsequent to receiving BAT approval, on November 8, 1984, ABC Sierra Nevada presented its proposed non-union electrician apprenticeship standards to NSAC. NSAC rejected the proposed apprenticeship standards on November 29, 1984. Contrary to the assertions of Petitioner, ABC Sierra Nevada has actively pursued state recognition repeatedly from 1984 until filing this litigation, each time applying to the NSAC with standards prepared by and approved by BAT, meeting all the criteria for approval under 29 C.F.R. §§ 29-30, and all U.S. Department of Labor interpretations thereof. Each time, NSAC failed to articulate any meaningful rule by which ABC or other non-union programs would be approved by NSAC. In fact, BAT had been so frustrated with the lack of approval of any non-union program without any articulated rational basis, that BAT was seriously considering decertifying the entire NSAC as its agent under 29 C.F.R. § 29.13.[1]

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[1] The essential elements of an apprenticeship program are a training curriculum which consists of "on the job" training, classroom lectures (called "related and supplemental" instruction) and a wage and benefit rate to maintain the apprentice and provide the apprentice incentive to advance without causing the employer to use untrained labor in lieu of apprentices. Of all the employee benefit plans covered by ERISA, apprenticeship is the only plan that includes wages as part of the benefit plan itself. The document that establishes both the

(Continued on following page)

On October 20, 1989, a hearing on Respondents' Motion for Preliminary Injunction was heard in the District Court before the Hon. Bruce R. Thompson. By stipulation, the parties agreed that the court's decision would be final and on the merits. On December 22, 1989 (as amended on February 28, 1990), as reported at 731 F. Supp. 966, Judge Thompson held that NRS 338.080 was preempted by federal law on two grounds: 1) the statute, as applied, unconstitutionally discriminated against BAT approved programs; and 2) the statute was inconsistent with the decision in *Hydrostorage, Inc. v. Northern California Boilermakers*, 685 F. Supp. 718 (N.D. Cal. 1988), *aff'd* 891 F.2d 719 (9th Cir. 1989) and thus preempted by ERISA.[2] The District Court also held that the regulations under the National Apprenticeship (Fitzgerald) Act preempted any conflicting state standards or regulations.

Petitioner appealed the decision of the District Court to the United States Court of Appeals for the Ninth Circuit and a hearing was held on April 8, 1991. On

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(Continued from previous page)

curriculum (hours of study and subject matter) and the wages paid various experience levels of apprentices is call the "standards". A copy of ABC National Apprentice Standards were submitted to the Court of Appeals and a copy of the standards for Respondent were submitted to the District Court. ABC's national standards for Electricians, signed by the United States Department of Labor, Bureau of Apprenticeship and Training, is reproduced at Appendix B.

[2] The Petition for Writ of Certiorari in *Hydrostorage* was denied by this Court at ___ U.S. ___, 111 S. Ct. 72, 112 L.Ed.2d 46 (1990).

November 8, 1991, the Ninth Circuit issued its unanimous decision, affirming the District Court. As reported at 949 F.2d 270, the Court of Appeals held that ERISA preempted the application of NRS § 338.080 because Nevada's regulation of apprenticeship programs existed separate and apart from that authorized by the non-preempted Fitzgerald Act, 29 U.S.C. § 50; the court ruled that all Nevada apprenticeship regulations must be consistent with the Fitzgerald Act regulations, 29 C.F.R. §§ 29-30 to be valid and not preempted. Due to the statute's preemption by ERISA, the Ninth Circuit vacated the District Court's holding that NRS § 338.080 was in violation of the Equal Protection Clause. Petitioner did not seek a rehearing of the Ninth Circuit decision.

REASONS FOR DENYING THE WRIT

There are two primary reasons to deny the State of Nevada's Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, or to summarily affirm the decision reported at 949 F.2d 270 (1991). First, the Court of Appeals correctly decided this case as the mandate of the Employee Retirement Income Security Act of 1974, or "ERISA", 29 U.S.C. § 1001 *et seq.*, is crystal clear: ERISA specifically preempts all state regulation of employee benefit plans, including *"apprenticeship or other training programs."* 29 U.S.C. §§ 1002(1), 1144(a). There is no conflict among the Circuit Courts of Appeals or state courts on this matter. The courts which have considered ERISA's preemption of state apprenticeship regulations have agreed with the Ninth Circuit opinion. The "savings clause" of 29 U.S.C. § 1144(d) applies only to *federal laws*

or regulations, while the preemption section of 29 U.S.C. § 1144(a) applies to all State laws. An agreement to be recognized as a State Apprenticeship Council ("SAC") state, "gives the SAC the authority [only] to determine whether an apprenticeship program conforms with the [United States] Secretary's [of Labor] published standards and the program is therefore eligible for those Federal purposes which require such a determination by the Secretary." 29 C.F.R. § 29.12(a). The Secretary of Labor's standards for apprenticeship approval are contained in 29 C.F.R. §§ 29-30. One of the "federal purposes" contained in the regulations is exemption from ERISA preemption. 29 C.F.R. § 29.2(k).[3] To the extent that state law and regulations differ from federal rules, then they must be preempted.

Second, the decision of the Ninth Circuit was fair and appropriate. In order to remain competitive in a world economy, this country needs the additional training of individuals in apprenticeable occupations. If state apprenticeship councils, which are generally comprised of representatives from existing apprenticeship programs, deny state approval to proposed programs for reasons unrelated to training, the entire national economy will suffer.

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[3] 29 C.F.R. § 29.2(k) provides (emphasis added):

> Federal purposes includes any Federal contract, grant, agreement or arrangement dealing with apprenticeship; and any Federal financial or *other assistance, benefit, privilege, contribution, allowance, exemption, preference, or right pertaining to apprenticeship.*

Since the era of revenue sharing, most public works projects are administered by state and local governments. For a federally approved program to survive, employers who are part of an apprenticeship program must be allowed to pay apprenticeship wages on all public works projects. Thus, there must be some recourse when a state apprenticeship council refuses to certify a valid apprenticeship program. It is therefore essential and necessary that BAT approval be recognized by the appropriate state labor commissioner for state prevailing wage purposes. As more fully set forth herein, this Court should either deny the Petition or summarily affirm the decision of the United States Court of Appeals for the Ninth Circuit.

1. NRS § 338.080 CLEARLY RELATES TO AND REGULATES AN ERISA EMPLOYEE WELFARE BENEFIT PLAN AND IS THUS SUBJECT TO PREEMPTION.

Under ERISA, "private parties, not the Government, control the level of benefits." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511 (1981). ERISA is a "comprehensive remedial statute 'designed to protect the interest of employees in pension and welfare plans, and to protect employers from conflicting and inconsistent state and local regulations of such plans.' " *Local Union 598 v. J.A. Jones Constr. Co.*, 846 F.2d 1213, 1217 (9th Cir. 1988) (quoting *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1501 (9th Cir. 1985)), *aff'd* 488 U.S. 881 (1988).

ERISA defines the term "employee benefit welfare plan" to "mean any plan, fund, or program . . .

maintained by an employer or by an employee organization, or by both, to the extent that . . . [it] was established or is maintained for the purpose of providing for its participants . . . *apprenticeship or other training programs.*" 29 U.S.C. § 1002(1) [emphasis supplied]. Apprenticeship and similar training programs are the only ERISA benefit plans that include wages as part of the benefits. See, appendix B at App. 35, requiring the setting of a journey-level wage rates and at App. 42 for the percentage payments based upon time in the program as wages for apprentices. ERISA defines "State law" as "all laws, decisions, rules, regulations or other State action having the effect of law." 29 U.S.C. § 1144(c)(1). NRS Chapter 610 is a state law that regulates *and purports to regulate* apprenticeship, and only apprenticeship.

The preemption clause of ERISA, is "conspicuous for its breath. It establishes as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA." *FMC Corp. v. Holliday*, 498 U.S. ___, 112 L.Ed 2d 356, 364 (1990). The phrase "relates to" has been broadly interpreted by this Court:

> Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause 'applicable only to state laws relating to the specific subjects covered by ERISA.' . . .
>
> [A] state law may "relate to" a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect. *Ingersoll-Rand v. McClendon*, 498 U.S. ___, 112 L.Ed 2d 474, 483-484 (1990) (citations omitted).

State regulation which relates to and/or affects an ERISA apprenticeship plan, rather then creating an employee benefit, is preempted under ERISA. *Boise Cascade Corp. v. Peterson*, 939 F.2d 632, 637 (8th Cir. 1991). Apprenticeship programs have been expressly defined by Congress as "employee welfare benefit plans" covered under ERISA. 29 U.S.C. § 1002(1); *Hydrostorage v. Northern Cal. Boilermakers*, 891 F.2d 719, 727-728 (9th Cir. 1989) *cert. den.* ___ U.S. ___, 111 S. Ct. 72, 112 L.Ed.2d 46 (1990).

It is beyond doubt that NRS § 338.080 and NRS § 610 *et seq.*, clearly "make reference to" and have "a connection with" ERISA plans such that their operation "relate to" plans within the meaning of ERISA's preemption clause, 29 U.S.C. § 1144(a). As the Court of Appeals correctly stated:

> The denial of the [prevailing wage] exemption to the BAT-approved JAC apprenticeship program, because it was not also approved by the Nevada State Apprenticeship Council, in effect forces ABC's JAC apprenticeship program to comply with the standards of the State Committee, independent and apart from the regulation authorized and provided for by the Fitzgerald Act and its accompanying regulations. *MacDonald II*, 949 F.2d at 274.

NRS Chapter 338 requires all contractors employing workers on state or local government projects to pay the "prevailing wage rate" as determined by the Labor Commissioner of the State of Nevada. This prevailing wage rate is by definition the single rate paid to the most journeypersons working in the craft in the locality of the project. Under NRS § 338.080, a contractor who employs

state "approved" apprentices on such public works projects does not have to pay the apprentices the "prevailing journeyman rate." If the apprentice is indentured in a state approved apprenticeship training program, the contractor must pay the wages set forth in the apprenticeship programs. A program will win State approval only if it meets the criteria set forth in NRS 610 *et seq.* and the rules and regulations of NSAC. As interpreted by the Labor Commissioner, federally approved apprenticeship programs do not automatically qualify for the benefits of State approval under NRS § 338.080.

In short, the only way to receive the benefit of the prevailing wage exemption for apprentices under § 338.080 is to use apprentices enrolled in a NSAC approved program. A program that does not meet the provisions of NRS § 610 *et seq.* will only be approved by BAT if it meets the provisions of 29 C.F.R. §§ 29-30. To the extent NRS § 610 *et seq.* mirrors 29 C.F.R. §§ 29-30, there is no conflict and no preemption. By receiving BAT approval after being rejected by NSAC, the ABC JAC must have met the 29 C.F.R. §§ 29-30 requirements.

Thus, the Nevàda prevailing wage scheme for apprenticeship purports to regulate, indirectly and directly, an ERISA plan. The state reaches the terms and conditions of the employee benefit plans (trust fund and apprenticeship standards) by not allowing Respondents' apprenticeship program to dispatch its apprentices to state public works projects at wages sanctioned for other NSAC approved programs, thus compelling contractors to depart from the BAT approved wage standards, and/or causing contractors to join State approved plans as opposed to federally approved plans.

Further, the authority given Petitioner and exercised here, creates a state-sponsored mechanism to ensure a protectionist and monopolistic environment for "favored" ERISA plans: it keeps such plans from facing competition by other parallel apprenticeship plans. Thus, NRS § 338.080, as relating to and regulating an ERISA employee welfare benefit plan, is subject to ERISA preemption. As stated by the District Court:

> The apprenticeship standards for electrical construction adopted by the Sierra Nevada Chapter of Associated Contractors and Builders, Inc., (sic) in cooperation with BAT, provides in Section XX on page 10, a specific schedule of apprentice wages. These standards were approved by BAT. The Nevada statute at issue, NRS 338.080, is directly inconsistent with these standards and thus preempted under the authority of the *Hydrostorage* case. [*MacDonald I*, 731 F.Supp at 969.]

The Ninth Circuit's determination is in complete concurrence with the other Circuit Court of Appeals that has dealt with ERISA's preemption of state apprenticeship laws. In *Boise Cascade Corp. v. Peterson*, 939 F.2d 632 (8th Cir. 1991), the United States Court of Appeals for the Eighth Circuit held that a proposed Minnesota regulation imposing a required ratio between journeymen and apprentices on jobsites was preempted by ERISA. The determining factor, in the Court's view, was that the regulation in question was specifically designed to affect and regulate and employee benefit *plan*, as opposed to

creating an employee *benefit* that is beyond ERISA's reach. *Id.* at 637.

2. THE SAVINGS CLAUSE OF ERISA ONLY APPLIES WHEN STATE APPRENTICESHIP COUNCILS ARE ACTING WITHIN THE AUTHORITY OF THE FITZGERALD ACT.

Section 514(d) of ERISA, 29 U.S.C. § 1144(d), succinctly provides that nothing in ERISA "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." But the "savings clause" for federal laws and regulations contained in Section 1144(d) was not intended to overrule preemption of State regulation in Section 1144(a). ERISA's structure and legislative history "caution against applying [section 514(d)] too expansively." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 104 (1983).

The Ninth Circuit's decision correctly interpreted the effect of ERISA's savings clause on Petitioner's authority to enforce the exemption provisions of NRS § 338.080. The court stated that:

> It is clear that the JAC apprenticeship program, sponsored by ABC and approved by BAT, is an apprenticeship program defined by ERISA, and thus cannot be regulated by the State apart from its approval function under the Fitzgerald Act regulations. As we have noted, in order for any apprenticeship program to work effectively, the employer must be able to pay a lesser wage to the apprentices while they are learning their skilled trade. The denial of the exemption to the

> BAT-approved program JAC apprenticeship program, because it was not also approved by the Nevada State Apprenticeship Council, in effect forces ABC's JAC apprenticeship program to comply with the standards of the State Committee, independent and apart from the regulation authorized and provided for by the Fitzgerald Act and its accompanying regulations. The approval of the JAC apprenticeship program by BAT in effect establishes that the program meets the requirements of the Fitzgerald Act, the only apprenticeship regulations that are permissible as not being preempted by section 514(a) of ERISA. Any state regulation inconsistent with that determination is preempted by section 514(a) of ERISA. Thus, the decision of the district court in enjoining the Nevada Labor Commissioner from enforcing NRS § 338.080, so as not to exempt the JAC apprenticeship program from the provisions of the Nevada prevailing wage statutes, is warranted because an order denying the exemption amounts to indirect State regulation of the apprenticeship program. [*MacDonald II*, 949 F.2d at 274.]

The court's analysis is accurate for several reasons. First, NRS § 338.080 operates as an enforcement mechanism not envisioned by the Fitzgerald Act and its regulations. The facts of this case are directly analogous to those in *Hydrostorage*, 891 F.2d 719 (9th Cir. 1989) *cert. den.* ___ U.S. ___, 111 S. Ct. 72, 112 L.Ed.2d 46 (1990). In *Hydrostorage*, the Ninth Circuit determined that California Labor Code 1777.5, which required that contractors awarded public works contracts apply to and utilize apprentices from local joint apprenticeship committees was preempted by ERISA. § 1777.5 was not "saved" from

ERISA preemption by the Fitzgerald Act because neither the Act nor its regulations set forth provisions for state law enforcement. *Id.* at 730-732. According to 29 C.F.R. § 29.1, the Fitzgerald Act and its accompanying regulations:

> set forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes. . . . These labor standards, policies and procedures cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

The Fitzgerald Act thus neither provides for nor allows various state law enforcement provisions. In this case, the power given Petitioner under NRS § 338.080 operates solely as an *enforcement mechanism* to insure that apprentice programs either conform to the standards set by the NSAC or pay prevailing journeymen rates to apprentices on state public works projects.

Although the Fitzgerald Act's provisions permit federal/state cooperation on apprenticeship program approval, nothing in the regulations or the federal Act permit the state to function as the creator of a monopoly for protected, NSAC approved, ERISA programs. The purpose of the federal Act is to increase apprenticeship opportunities by allowing states to certify for federal purposes *using federal* criteria. See 29 C.F.R. § 29.13(a). Thus, NSAC cannot use the Fitzgerald Act's delegation of

approval authority to create additional powers not envisioned in the statute.[4] The delegation proposed by Petitioners herein operates to deny the federal government the right to approve apprenticeship programs, a result clearly contra-indicated by both the statute and the regulations. Therefore, ERISA's preemption of state law in this case would certainly not modify or impair Fitzgerald Act regulations regarding the approval procedures of apprenticeship programs. Instead, it would facilitate state adherence to federal rules. As the Ninth Circuit stated in *Hydrostorage* (emphasis added):

> *Nor does the Fitzgerald Act contain any clause which preserves state laws. Id.* at 732.

Second, Petitioner cannot deny Respondent's program an exemption under NRS § 338.080 because the BAT's approval of Respondent's program necessarily means that the program meets all the standards of 29 C.F.R. § 29 *et seq.*, the only standards for apprenticeship approval not preempted by ERISA. As cited above in 29 C.F.R. § 29.1, the Secretary of Labor is granted the separate authority to set various labor standards which proposed apprenticeship program must meet in order to be granted approval by either the BAT or the applicable SAC. Under ERISA, these are the only allowable standards to measure approval. See *MacDonald II*, 949 F.2d at 273; *Hydrostorage*, 891 F.2d at 731.

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[4] *See General Electric Company v. New York State Dept. of Labor*, 936 F.2d 1448, 1454-1459 (2nd Cir. 1991) (prevailing wage law unconstitutionally delegates to private parties the authority to determine the prevailing wage).

The Fitzgerald Act envisions a dual role of apprenticeship approval by both the applicable SAC or the BAT. 29 C.F.R. 29.3(a) provides that:

> Eligibility for various Federal purposes is conditioned upon a program's conformity with apprenticeship programs standards published by the Secretary of Labor in this part. For a program to be determined by the Secretary of Labor as being in conformity with these published standards the program must be registered with the Bureau or registered with and/or approved by a State Apprenticeship Agency or Council recognized by the Bureau. Such determination by the Secretary is made only by such registration.

Although NSAC is given the authority to approve proposed programs for federal purposes, 29 C.F.R. § 29.12(a), there is no Fitzgerald Act regulation which expressly provides that such authority is exclusive or that the Secretary of Labor has lost the power to independently approve apprenticeship programs. See, e.g., *General Electric, supra*. While 29 C.F.R. § 29.12(a)(5) allows NSAC flexibility in its policies and operating procedures (not, however, in the imposition of additional apprenticeship standards), this regulation does limit BAT's authority in approving apprenticeship programs. Similarly, although 29 C.F.R. § 29.12(e) sets forth a procedure for the approval of state apprenticeship programs, it does not preclude direct BAT approval of a program under the standards of 29 C.F.R. § 29 *et seq*. Indeed, BAT has long approved programs in SAC states.

Regardless of the Fitzgerald Act's delegation of the authority to approve apprenticeship programs, it must be

stressed that it is the Secretary of Labor's authority under the Fitzgerald Act, not the NSAC's, whose authority is saved from ERISA preemption. Exemption from ERISA preemption is a "federal purpose" under 29 C.F.R. § 29.12(k). Under § 29.12(a), the United States Secretary of Labor delegates to local SAC's the authority to determine when an applicant apprenticeship program meets the requirements of 29 C.F.R. §§ 29-30. Local SACs act as agents for the BAT in registering new apprenticeship programs. The principle (BAT) retains the authority to approve directly in cases where its agent (SAC) refuses to follow its criteria, 29 C.F.R. §§ 29-30. As stated in 29 C.F.R. § 29.12(a):

> The Secretary's recognition of a State Apprenticeship Agency or Council (SAC) gives the SAC the authority to determine whether an apprenticeship program conforms with the *Secretary's* published standards and the program is, therefore, eligible for those Federal purposes which require such a determination by the Secretary.

Finally, the issue of reciprocality presented by the Petitioner may not be ripe. The issue was not presented to the Court of Appeals, and deals with contractors with BAT or SAC approval in one area who desire to use their apprentices in another area, an area *not* approved by BAT in the standards.

Petitioner argues that the Ninth Circuit grafted onto § 338.080 the requirement of reciprocity. Yet Petitioner's arguments are essentially nullified by closer examination of its own statutes. § 338.080(2) allows an exemption from the Nevada prevailing wage laws to "Apprentices recorded under the provisions of chapter 610 of NRS." NRS Chapter

610 formerly defined an "apprentice" as a person working under a written agreement "approved by the state apprenticeship council." NRS § 610.010 (1986). This section, however, was amended in 1987 to define an apprentice as a person working in a "program of training and instruction as an apprentice." NRS § 610.010 (Supp. 1989). Thus, it appears that § 338.080 exempts a person in *any* recognized apprenticeship program and not merely one approved by the State of Nevada. Depending on the enforcement of this statute, the issue of traveling contractors and apprenticeship may never come before the Court. Petitioner's contention regarding reciprocity of approval is therefore unripe; this Court should decline to issue a writ of certiorari in this action in anticipation of a case where reciprocity of approval is clearly at issue. As the Court of Appeals stated in *MacDonald II* at 275:

> Just as our opinion in *Hydrostorage* did not declare the entire California statutory provision preempted but, instead, the administrative application of that provision preempted, so we do not conclude NRS § 338.080 preempted, but rather the Labor Commissioner's intended interpretation and application of it.

3. THE NINTH CIRCUIT'S DECISION WAS APPROPRIATE BECAUSE THE NATIONAL NEED FOR APPRENTICESHIP TRAINING MUST TAKE PRECEDENCE OVER THE DESIRES OF CAPTIVE STATE AGENCIES TO PROTECT EXISTING PROGRAMS.

The decision reached by the Ninth Circuit in this case represents a fair and just step forward for apprenticeship training. If Petitioner's views regarding the authority of SACs are espoused by this Court, apprenticeship programs

which meet the Fitzgerald Act criteria will be precluded from training by SACs who will be able to graft upon the Fitzgerald Act regulations and impose standards unrelated to training.

In most states that utilize a SAC for apprenticeship program approval, the SAC consists of an equal number of representatives from employee organizations (unions) and employers. See 29 C.F.R. § 29.12(b)(2); NRS § 610.030; see also, California Labor Code § 3070. Included within the SAC employer members can be those signatory to a union contract. Therefore, it is private members of the "approved apprenticeship program" community, not representatives of neutral state agencies or the public at large, who decide whether or not a proposed apprenticeship program is granted state approval. These private members represent the interests of the existing, incumbent programs, and thus SACs inherently possess an institutional bias against any proposed program that will offer competition. The Ninth Circuit, in *Washington State Elec. Contractors v. Forrest*, 930 F.2d 736 (9th Cir. 1991), acknowledged the possibility of this bias in determining whether the Washington Apprenticeship Council should qualify as a state agency for antitrust purposes:

> It is now apparent, after further briefing and argument, that the Apprenticeship Council may not qualify as a state agency. The council has both public and private members, and the private members have their own agenda which may or may not be responsive to state labor policy. *Id.* at 737.

New programs represent competition and are therefore unlikely to be granted approval by SAC's dominated

by existing program sponsors. *See, e.g., Huhn v. Ross,* 14 Empl. Prac. Dec. (CCH) 7641 (E.D.N.Y. 1977), where allegations that a state labor commissioner and two local unions conspired, through the deregistration of apprenticeship programs, to deprive non-union contractors of public works job opportunities, was sufficient to state a claim for an unconstitutional denial of equal protection.

The Fitzgerald Act and its accompanying regulations provide objective, neutral standards, allowing for a proposed program to be judged on its merits, not on whether the program is affiliated with a labor organization or will provide competition with existing programs. It must be stressed here that until Respondents filed suit in the district court, no non-union apprenticeship program had ever received state approval by the NSAC. *MacDonald I,* 731 F. Supp. at 967. As stated recently by the California Court of Appeals in *Southern Cal. Ch. of Associated Builders etc. Com. v. California Apprenticeship Council* (1991) 1 Cal. App. 4th 517, 530-531:[5]

> It is completely inconsistent with the statute to allow the Council to deny apprenticeship benefits where there is a need for them, merely because the new programs might compete with

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[5] On February 27, 1992 the California Supreme Court granted review in this case solely on the issue of "The effect of the Employee Retirement Income Security Act (29 U.S.C. § 1001, *et seq.*) on the power of the California Apprenticeship Council and the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations to approve or disapprove apprenticeship programs." No reference is made herein to that portion of the decision for which review was granted.

> existing programs and pay lower, nonunion scale wages. [footnote] The state law remains neutral as between union or nonunion plans; it looks to a societal need and does not purport to insert itself into the conflicts between union and employers.

Although it was describing the battle for state apprenticeship program approval in California, the California State Court of Appeals in *Southern Cal. Ch. of Associated Builders, supra,* correctly characterized the historical roadblocks presented against any new apprenticeship program by existing approved programs who control and dominate the State Apprenticeship Council. As the court stated at 1 Cal. App. 4th at 535:

> . . . nowhere in the relevant state legislation do we find any indication that the wider provision of these benefits should be impeded by jealously guarded private monopolies, defending their own interests from any prospect of competition by conjuring up bureaucratic roadblocks.

By allowing employers to qualify under either State rules approved by BAT or federal BAT rules directly, the arbitrary and capricious actions of SAC's will be discouraged and the training of apprentices will be encouraged. Employers desiring to submit to regulation of their training will be able to avoid state-supported hostility toward proposed programs by seeking federal approval directly. Of course, the federal BAT will not approve any program unless it was first rejected by a SAC (in States that have such councils) for reasons BAT considers improper under its regulations. In other words, BAT will not approve any program that an SAC has properly rejected.To succeed, these BAT approved programs must allow employers

doing all public works projects to pay apprentices at the wages contained in the BAT approved standards. Therefore, the United States Court of Appeals for the Ninth Circuit reached the appropriate and fair decision in this case.

CONCLUSION

For all the foregoing reasons, Respondents respectfully submits that this Petition for Writ of Certiorari should be denied or that the decision of the United States Court of Appeals for the Ninth Circuit be summarily affirmed.

Respectfully submitted,

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APPENDIX A

CHAPTER 610.

APPRENTICESHIPS.

General Provisions

610.010. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Agreement means a written and signed agreement of indenture as an apprentice.

2. "Apprentice" means a person who is covered by a written agreement, issued pursuant to a program with an employer, or with an association of employers or an organization of employees acting as agent for an employer.

3. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

4. "Program" means a program of training and instruction as an apprentice in an occupation in which a person may be apprenticed. (1939, p. 325; CL 1929 (1941 Supp.), § 506.06; 1977, p. 281; 1979, p. 766; 1987, ch. 197, § 5, p. 442; 1991, ch. 392, § 13, p. 1021.)

610.020. Purposes.

The purposes of this chapter are:

1. To open to people, without regard to race, color, creed, sex, religion, disability or national origin, the opportunity to obtain training that will equip them for profitable employment and citizenship.

2. To establish, as a means to this end, an organized program for the voluntary training of persons under approved standards for apprenticeship, providing facilities for their training and guidance in the arts and crafts of industry and trade, with instruction in related and supplementary education.

3. To promote opportunities for employment for all persons, without regard to race, color, creed, sex, religion, disability or national origin, under conditions providing adequate training and reasonable earnings.

4. To regulate the supply of skilled workers in relation to the demand for skilled workers.

5. To establish standards for the training of apprentices in approved programs.

6. To establish a state apprenticeship council with the authority to carry out the purposes of this chapter and provide for local joint apprenticeship committees to assist in carrying out the purposes of this chapter.

7. To provide for a state director of apprenticeship.

8. To provide for reports to the legislature and to the public regarding the status of the training of apprentices in the state.

9. To establish procedures for regulating programs and deciding controversies concerning programs and agreements.

10. To accomplish related ends. (1939, p. 323; CL 1929 (1941 Supp.), § 506; 1960, p. 79; 1975, p. 1454; 1977, p. 282; 1987, ch. 197, § 6, p. 442; 1991, ch. 392, § 14, p. 1022.)

STATE APPRENTICESHIP COUNCIL

610.030. Creation; members.

1. A state apprenticeship council composed of seven members is hereby created.

2. The labor commissioner shall appoint:

(a) Three members who are representatives from employer associations and have knowledge concerning occupations in which a person may be apprenticed.

(b) Three members who are representatives from employee organizations and have knowledge concerning occupations in which a person may be apprenticed.

(c) One member who is a representatives of the general public and who, before his appointment, must first receive the unanimous approval of the members appointed under the provisions of paragraphs (a) and (b).

3. The state official who has been designated by the state board of occupational education as being in charge of trade and industrial education is an ex officio member

of the state apprenticeship council but may not vote (1939, p. 323; CL 1929 (1941 Supp.), § 506.01; 1985, p. 818; 1987, ch. 197, § 7, p. 443.)

610.040. Terms of office of members.

1. In making the initial appointments to the council, the labor commissioner shall appoint:

(a) One member who is a representative from employer associations, one member who is a representative from employee organizations, and one member who is the representative from the general public for terms of 1 year.

(b) One member who is a representative from employer associations and one member who is a representative from employee organizations for terms of 2 years.

(c) One member who is a representative from employer associations and one member who is a representative from employee organizations for terms of 3 years.

2. After the initial appointments provided for in subsection 1, each member shall serve for a term of 3 years. (1939, p. 323; CL 1929 (1941 Supp.), § 506.01; 1977, p. 1245.)

610.050. Vacancies.

Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of the term. (1939, p. 323; CL 1929 (1941 Supp.), § 506.01.)

610.060. Officers.

1. The member who is a representative of the general public shall act as chairman of the state apprenticeship council but shall not vote on matters before the council except in the case of a tie.

2. The labor commissioner or his appointed representative is the ex officio secretary of the state apprenticeship council, but may not vote. (1939, pp. 323, 324; CL 1929 (1941 Supp.), §§ 506.01, 506.02; 1987, ch. 197, § 8, p. 443.)

610.070. Meetings.

The state apprenticeship council shall meet at least once in each calendar quarter and may meet at other times at the call of a majority of its members. (1939, p. 323; CL 1929 (1941 Supp.), § 506.01; 1977, p. 282; 1983, p. 1448; 1987, ch. 197, § 9, p. 444.)

610.080. Compensation of members and employees.

1. Each member of the state apprenticeship council is entitled to receive a salary of not more than $80 per day, as fixed by the council, while attending meetings of the council.

2. While engaged in the business of the council, each member and employee of the council is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally. (1947, p. 766; CL 1929 (1949 Supp.), § 506.11a; 1969, p. 772; 1975, p. 300; 1981, p. 1989; 1987, ch. 554, § 50, p. 1312; 1989; 1989, ch. 736, § 85, p. 1721.)

610.090. Duties.

The state apprenticeship council shall:

1. Establish standards for programs and agreements that are not lower than those prescribed by this chapter.

2. Upon review and approval, extend written reciprocal recognition to multistate joint programs.

3. Adopt such regulations as may be necessary to carry out the intent and purposes of this chapter.

4. Perform such other functions as may be necessary for the fulfillment of the intent and purposes of this chapter. (1939, p. 323; CL 1929 (1941 Supp.), § 506.01; 1987, ch. 197, § 10, p. 444.)

610.095. Additional duties.

The state apprenticeship council shall:

1. Register and approve or reject proposed programs and standards for apprenticeship.

2. After notice and hearing and for good cause shown, suspend, terminate, cancel or place conditions upon any approved program, or place an approved program on probation. (1987, ch. 197, § 4, p. 442.)

610.100. Report to legislature and public.

The state apprenticeship council shall make a report of its activities and findings, through the labor commissioner, as provided in NRS 607.080, to the legislature and

to the public. (1939, p. 323; CL 1929 (1941 Supp.), § 506.01; 1965, p. 68.)

ADMINISTRATION AND ENFORCEMENT

610.110. Labor commissioner to be state director of apprenticeship.

The labor commissioner or his duly appointed representative shall be ex officio state director of apprenticeship (1939, p. 324; CL 1929 (1941 Supp.), § 506.02.)

610.120. Powers of state director of apprenticeship.

1. The state director of apprenticeship shall:

(a) Administer the provisions of this chapter with the advice and guidance of the state apprenticeship council.

(b) In cooperation with the state apprenticeship council and local or state joint apprenticeship committees, set up conditions and standards for proposed program, that are not less stringent than those prescribed by this chapter.

(c) Approve any agreement which meets the standards established under this chapter and terminate or cancel any agreement in accordance with the provisions of the agreement, the program, this chapter and the standards approved by the state apprenticeship council.

(d) Keep a record of agreements and their dispositions.

(e) Issue certificates of completion of apprenticeship at the request of the local joint apprenticeship committee.

(f) Perform such other duties as are necessary to carry out the intent and purposes of this chapter.

2. The administration and supervision of:

Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for that instruction are the responsibility of the local joint apprenticeship committees. (1939, p. 324; CL 1929 (1941 Supp.), § 506.03; 1977, p. 282; 1987, ch. 197, § 11, p. 444; 1989, ch. 48, § 7, p. 85.)

610.140. Duties of local or state joint apprenticeship committees.

1. A local or state apprenticeship committee shall:

(a) In accordance with standards set up by the state apprenticeship council, work in an advisory capacity with employers and employees in matters regarding schedules of operations, application of wage rates, and working conditions for apprentices, which conditions must specify the number of apprentices which may be employed locally in the trade under programs and agreements entered into under this chapter.

(b) Adjust disputes concerning apprenticeships not otherwise provided for in bona fide collective bargaining agreements.

(c) Within 10 days after the termination of any agreement, submit to the state apprenticeship council a written notice which includes the name of the apprentice and the reason for the termination.

(d) Keep the state apprenticeship council informed of all actions.

2. The decisions of local or state joint apprenticeship committees are, at all times, subject to appeal to the state apprenticeship council. (1939, p. 325; CL 1929 (1941 Supp.), § 506.05; 1977, p. 283; 1987, ch. 197, § 12, p. 444.)

610.144. Requirements for program to be eligible for registration and approval by state apprenticeship council.

To be eligible for registration and approval by the state apprenticeship council, a proposed program must:

1. Be an organized, written plan embodying the terms and conditions of employment, training and supervision of one or more apprentices in an occupation in which a person may be apprenticed and be subscribed to by a sponsor who has undertaken to carry out the program.

2. Contain the pledge of equal opportunity prescribed in 29 C.F.R. § 30.3(b) and, when applicable:

(a) A plan of affirmative action in accordance with 29 C.F.R. § 30.4;

(b) A method of selection authorized in 29 C.F.R. § 30.5;

(c) A nondiscriminatory pool for application as an apprentice; or

(d) Similar requirements expressed in a state plan for equal opportunity in employment in apprenticeships adopted pursuant to 29 C.F.R. Part 30 and approved by the Department of Labor.

3. Contain:

(a) Provisions concerning the employment and training of the apprentice in a skilled trade;

(b) A term of apprenticeship of not less than 2,000 hours of work experience, consistent with training requirements as established by practice in the trade;

(c) An outline of the processes in which the apprentice will receive supervised experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) Provisions for organized, related and supplemental instruction in technical subjects related to the trade with a minimum of 144 hours for each year of apprenticeship, given in a classroom or through trade, industrial or correspondence courses of equivalent value or other forms of study approved by the state apprenticeship council;

(e) A progressively increasing, reasonable and profitable schedule of wages to be paid to the apprentice consistent with the skills acquired, not less than that allowed by federal or state law or regulations or by a collective bargaining agreement;

(f) Provisions for a periodic review and evaluation of the apprentice's progress in performance on the job and related instruction and the maintenance of appropriate records of his progress;

(g) A numeric ratio of apprentices to journeymen consistent with proper supervision, training, safety, continuity of employment and applicable provisions in collective bargaining agreements, in language that is specific and clear as to its application in terms of job sites, work forces, departments or plants;

(h) A probationary period that is reasonable in relation to the full term of apprenticeship, with full credit given for that period toward the completion of the full terms of apprenticeship;

(i) Provisions for adequate and safe equipment and facilities for training and supervision and for the training of apprentices in safety on the job and in related instruction;

(j) The minimum qualifications required by a sponsor for persons entering the program, with an eligible starting age of not less than 16 years;

(k) Provisions for the placement of an apprentice under a written agreement as required by this chapter, incorporating directly or by reference the standards of the program;

(l) Provisions for the granting of advanced standing or credit to all applicants on an equal basis for previously

acquired experience, training or skills, with commensurate wages for each advanced step granted;

(m) Provisions for the transfer of the employer's training obligation when he is unable to fulfill his obligation under the agreement to another employer under the same or a similar program with the consent of the apprentice and the local joint apprenticeship committee or sponsor of the program;

(n) Provisions for the assurance of qualified training personnel and adequate supervision on the job;

(o) Provisions for the issuance of an appropriate certificate evidencing the successful completion of an apprenticeship;

(p) An identification of the state apprenticeship council as the agency for registration of the program;

(q) Provisions for the registration of agreements and of modifications and amendments thereto;

(r) Provisions for notice to the labor commissioner of persons who have successfully completed the program and of all cancellations, suspensions and terminations of agreements and the causes therefor;

(s) Provisions for the termination of an agreement during the probationary period by either party without cause;

(t) A statement that the program will be conducted, operated and administered in

conformity with the applicable provisions of 29 C.F.R. Part 30 or a state plan for equal opportunity in employment in apprenticeships adopted pursuant to 29 C.F.R. Part 30 and approved by the Department of Labor;

(u) The name and address of the appropriate authority under the program to receive, process and make disposition of complaints; and

(v) Provisions for the recording and maintenance of all records concerning apprenticeships as may be required by the state apprenticeship council and applicable laws. (1987, ch. 197, § 2, p. 440.)

610.146. Representation of employees and apprentices in management of program with more than one employer.

All programs operated with more than one employer or an association of employers must include provisions sufficient to ensure meaningful and trustworthy representation of the interests of employees and apprentices in the management of the program. (1987, ch. 197, § 3, p. 442.)

610.150. Required contents of agreement.

Every agreement entered into under this chapter must contain:

1. The names and signatures of the contracting parties and the signature of a parent or legal guardian if the apprentice is a minor.

2. The date of birth of the apprentice.

3. The name and address of the sponsor of the program.

4. A statement of the trade or craft in which the apprentice is to be trained, and the beginning date and expected duration of the apprenticeship.

5. A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction must not be less than 144 hours per year.

6. A statement setting forth a schedule of the processes in the trade or division of industry in which the apprentice is to be trained and the approximate time to be spent at each process.

7. A statement of the graduated scale of wages to be paid the apprentice and whether or not compensation is to be paid for the required time in school.

8. Statements providing:

(a) For a specific period of probation during which the agreement may be terminated by either party to the agreement upon written notice to the state apprenticeship council; and

(b) That after the probationary period the agreement may be canceled at the request of the apprentice, or suspended, canceled or terminated by the sponsor for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and state apprenticeship council of the final action taken.

9. A reference incorporating as part of the agreement the standards of the program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

10. A statement that the apprentice will be accorded equal opportunity in all phases of employment and training as an apprentice without discrimination because of race, color, creed, sex, religion or disability.

11. A statement naming the state apprenticeship council as the authority designated pursuant to NRS 610.180 to receive, process and dispose of controversies or differences arising out of the agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the program or collective bargaining agreements.

12. Such additional terms and conditions as are prescribed or approved by the state apprenticeship council not inconsistent with the provisions of this chapter. (1939, p. 325; CL 1929 (1941 Supp.), § 506.07, 1960, p. 80; 1975, p. 1455; 1977, p. 283; 1983, p. 974; 1987, ch. 197, § 13, p. 445; 1991, ch. 392, § 15, p. 1022.)

610.160. Approval of agreement; signatures; training extending into majority.

1. No agreement under this chapter is effective until it is approved by the local joint apprenticeship committee and the state director of apprenticeship. A copy of the agreement must be forwarded within 10 days after approval by the local joint apprenticeship committee to the state director of apprenticeship.

2. Every agreement must be signed by the employer, by an association of employers or by an organization of employees acting as agent for an employer, and by the apprentice. If the apprentice is a minor, the agreement must also be signed by:

(a) Both parents, if the minor is living with both parents;

(b) The custodial parent, if the minor is living with only one parent; or

(c) The minor's legal guardian.

3. If a minor enters into an agreement under this chapter for a period of training extending into his majority, the agreement is likewise binding for the period covered during his majority. (1939, p. 326; CL 1929 (1941 Supp.), § 506.08; 1975, p. 1487; 1979, p. 766; 1987, ch. 197, § 14, p. 446.)

610.170. Agreement signed by association of employers or organization of employees.

For the purpose of providing greater diversity of training or continuity of employment, any agreement made under this chapter may, at the discretion of the local joint apprenticeship committee, be signed by a association of employers or an organization of employees instead of by an individual employer. In that case the agreement must provide expressly that the association of employers or organization of employees does not assume the obligation of an employer, but agrees to use its best endeavors to procure employment and training for the apprentice with one or more employers who will accept

full responsibility, as provided in this chapter, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and the association of employers or organization of employees during the period of employment (1939, p. 326, CL 1929 (1941 Supp.), § 506.09; 1987, ch. 197, § 15, p. 447.)

610.180. Violations of programs or agreements: Investigations; hearings; appeals; exhaustion of administrative remedies.

1. Upon the complaint of any interested person or upon its own initiative, the state apprenticeship council may investigate to determine if there has been a violation of the terms or conditions of an approved program or an agreement made under this chapter. The state apprenticeship council may hold necessary hearings, inquiries and other proceedings. The parties to each agreement and the sponsors and interested participants in the program shall be given a fair and impartial hearing, after reasonable notice. A copy of the determination or decision of each hearing must be filed with the labor commissioner, and if no appeal therefrom is filed with the labor commissioner within 10 days after the date thereof the determination or decision of the state apprenticeship council becomes the order of the labor commissioner.

2. Any person aggrieved by any determination or action of the state apprenticeship council may appeal to the labor commissioner, whose decision, when supported by evidence, is conclusive if notice of appeal therefrom to the courts is not filed within 30 days after the date of the decision of the labor commissioner.

3. A person shall not institute any action based upon:

(a) An agreement;

(b) Proposed or approved standards for apprenticeship; or

(c) A program governed by this chapter,

unless he first exhausts all administrative remedies provided by this chapter. (1939, p. 327; CL 1929 (1941 Supp.), § 506.10; 1977, p. 284; 1987, ch. 197, § 16, p. 447.)

610.185. Suspension of right to participate in program if discrimination practiced.

The state apprenticeship council shall suspend for 1 year the right of any employer, association of employers or organization of employees acting as agent for an employer to participate in a program under the provisions of this chapter if the Nevada equal rights commission, after notice and hearing, finds that the employer, association or organization has discriminated against an apprentice because of race, color, creed, sex, religion, disability or national origin in violation of this chapter. (1960, p. 81; 1975, p. 1456; 1977, pp. 83, 285; 1987, ch. 197, § 17, p. 447; 1991, ch. 392, § 16, p. 1023.)

Miscellaneous Provisions

610.190. Effect of chapter on collective bargaining agreement establishing higher standards.

Nothing in this chapter or in any agreement, standard or program approved under this chapter invalidates

any provisions in any collective bargaining agreement between employers and employees setting up higher standards for apprenticeship. (1939, p. 327; CL 1929 (1941 Supp.), § 506.11; 1987, ch. 197, § 18, p. 448.)

APPENDIX B

NATIONAL APPRENTICESHIP AND TRAINING STANDARDS

for

ASSOCIATED BUILDERS AND CONTRACTORS, INC.

For all apprenticeable occupations listed in the STANDARDS

Developed by the Associated Builders and Contractors, Inc., in cooperation with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor.

CONTENTS

PAGE

PREFACE ..... [App. 21]

NATIONAL STANDARDS ..... [App. 23]
- Definitions ..... [App. 23]
- The Apprenticeship Committee ..... [App. 24]
- Duties of the Apprenticeship Committee [App. 25]
- Supervision of Apprentices ..... [App. 26]
- Policy ..... [App. 26]
- Equal Opportunity in Apprenticeship ... [App. 27]
- Minimum Qualifications for Apprenticeship Application ..... [App. 27]
- Rating System ..... [App. 27]
- Sponsored Applicant ..... [App. 30]
- Application for Apprenticeship ..... [App. 30]
- Apprenticeship Registration ..... [App. 30]

Obligations of the Employer and Apprentice ..... [App. 31]
Term of Apprenticeship ..... [App. 31]
Probationary Period ..... [App. 32]
Related Instruction ..... [App. 33]
Ratio of Apprentices to Journeypersons [App. 34]
Hours of Work ..... [App. 34]
Continuity of Employment ..... [App. 34]
Wages of Apprentices ..... [App. 35]
Credit for Previous Experience ..... [App. 36]
Credit During the Term of Apprenticeship ..... [App. 36]
Certification of Completion of Apprenticeship ..... [App. 37]
Apprenticeship Complaint Procedure .... [App. 37]
Modification ..... [App. 37]
Deregistration ..... [App. 38]
Registration ..... [App. 38]
Official Approval ..... [App. 38]
Consultants ..... [App. 39]
Safety ..... [App. 39]
Compliance Assurance ..... [App. 40]
National Approval ..... [App. 40]
Local Program Approvals ..... [App. 41]

PREFACE

Recognizing the need for skilled craftworkers in the construction industry, the Associated Builders and Contractors, Inc., hereby establishes these national apprenticeship standards to be used by all of its chapters as the local apprenticeship program. Local application of these

national standards in States having recognized apprenticeship councils may require adaptation to meet the standards of apprenticeship in such States. The staffs of the Bureau of Apprenticeship and Training and the State apprenticeship agencies are available to advise on such standards.

The association hereby takes this action for the benefit of the apprentice, the employer, and the public.

These standards of apprenticeship shall cover the occupations listed below. Other apprenticeable occupations may be added through revision of these standards, as circumstances may require, and approval by the registration agency:

801.381-010	Assembler, Metal Building
861.381-018	Bricklayer
860.381-022	Carpenter
844.364-010	Cement Mason
842.681-010	Dry-Wall Applicator (const.; mfd. bldgs.)
824.261-010	Electrician (const.)
865.381-010	Glazier (const.)
863.364-014	Insulation Worker (Construction)
801.361-014	Ironworker (erector) (Structural Steel Worker)
710.281-026	Instrument & Control Mechanic (Instrument Mechanic)
638.281-018	Millwright (any ind.)
853.663-010	Operating Engineer (Asphalt-Paving machine Operator)

950.382-010	Operating Engineer (Plant Equipment Operator) (Boiler Operator)
620.261-022	Operating Engineer (Construction-Equipment Mechanic)
859.683-010	Operating Engineer (Universal-Equipment Operator)
840.381-010	Painter (const.)
862.281-022	Pipefitter (refrig., heating, & air conditioning)
842.361-018	Plasterer
862.381-030	Plumber-Pipefitter (Plumber)
866.381-010	Roofer
804.281-010	Sheet-Metal Worker
862.281-022	Sprinkler Fitter (Pipefitter)
819.384-010	Welder Combination

NATIONAL STANDARDS

Definitions

1. *Employer* shall mean an individual contractor or firm employing apprentices under these apprenticeship standards.

2. *Registration Agency* shall mean the Bureau of Apprenticeship and Training, U.S. Department of Labor, or where applicable, a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training.

3. *Apprentice* shall mean a person who is employed under an apprenticeship agreement to learn a skilled trade covered by these standards.

4. *Sponsored Applicant* shall mean an individual who is gainfully employed by a subscribing employer.

5. *Apprenticeship Agreement* shall mean a written agreement between the committee and the apprentice (and if a minor, the parent or guardian). The agreement shall be approved by the apprenticeship committee, signed by the chair-person of the committee or a designated agent, and registered with the registration agency. The apprenticeship agreement shall contain a statement making the terms and conditions of these standards a part of the agreement as though expressly written therein.

6. *The Committee* shall mean the apprenticeship committee appointed by the local chapter to administer this program. The committee shall be composed of no fewer than five members of the local chapter.

The Apprenticeship Committee

The apprenticeship committee shall be responsible for the administration and supervision of these standards and shall act as the employers' agent. It shall have a chair-person and a recording secretary.

The apprenticeship committee shall meet at least once each month during the entire year. A simple majority of members of the committee shall be deemed necessary to establish a quorum for official meetings of the committee.

The apprenticeship committee shall establish such additional rules and regulations governing its administrative procedure as may be necessary.

Duties of the Apprenticeship Committee

1. To screen and select qualified applicants for apprenticeship in accordance with the attached Affirmative Action Plan and Selection Procedures and to refer such applicants to employers.

2. To place apprentices under written apprenticeship agreement.

3. To establish minimum standards of related instruction and on-the-job training required of apprentices and to see that these are adhered to both on the job and in the classroom.

4. To approve apprenticeship agreements between the apprentice and committee and to submit these agreements to the appropriate registration agency for registration.

5. To hear and adjust all complaints of violations of apprenticeship agreements. The employer or the apprentice may consult with the committee or the registration agency at any time for an interpretation of any provision of these standards over which differences may occur.

6. To arrange tests for determining the apprentice's progress in manipulative skills and technical knowledge.

7. To provide for continuous employment of apprentices as far as possible.

8. To maintain a record of each apprentice's training progress on the job and in related instruction.

9. To make an annual report covering the work of the apprenticeship committee.

Supervision of Apprentices

During the term of apprenticeship, the apprentice shall be under the jurisdiction and control of the apprenticeship committee. The committee shall have the authority to protect the apprentice's welfare and also to instruct, direct, and discipline him or her at all times. Each employer shall designate a staff member (customarily a journeyperson) who shall be responsible for the supervision of the apprentice's on-the-job training. This supervisor shall be responsible for seeing that the apprentice is trained in all branches of the trade, including safety in the use of tools and equipment and in job conduct.

A qualified person, to be known as the apprenticeship coordinator or director, will be designated to assist the apprenticeship committee in the administration of these standards. The chapter executive director may serve in this capacity on a temporary basis.

Policy

On or after the date these standards of apprenticeship are duly registered, it shall be the policy of each subscribing employer and the committee that all apprentices employed in the trades covered herein shall be governed by the terms of these standards.

Equal Opportunity in Apprenticeship

The recruitment, selection, employment, and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin, or sex. The sponsor shall take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30, as amended.

Minimum Qualifications for Apprenticeship Application

1. Applicants shall be at least 17 years of age.
2. They shall be physically capable of performing the work of the trade. The method of determining physical capability will be a simple statement, in writing from a medical doctor, or the applicant's capability to do construction work.
3. They must have some mode of transportation to the employer's place of business and/or jobsite and to the place where classroom job-related instruction is conducted.

Rating System

Applicants who meet the minimum qualifications enumerated above shall be ranked objectively, and selections for apprenticeship shall be made in descending order of these rankings, from the highest on down. The recruitment, selection, employment, and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, or sex. The committee will take affirmative action

to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30.

Ranking Criteria are as follows:

Aptitude Test Results (GATB administered by State Labor Department or other agency)

Passed-Rate High	20
Rate Marginal	10
Rate Low	0

Educational Background-Subjects related to the trade (from applicant's school transcript)

Grade of C or above for:

High School General or Related Math	5
Physical Science	10
Algebra	10
Two years of related vocational training	20
One year of related vocational training	10

Interview (24 points total)

Interest	3X	Value Ratings:	Exceptional	3
Sincerity	3X		Good	2
Adaptability	2X		Fair	1
			Unsatisfactory	0

Example:

Exceptional interest	3x3=9
Fair sincerity	3x1=3
Good adaptability	2x2=4
Total on this section	16 points

Previous Experience (20 points total)

Related work in military service	1-10
Related civilian work	1-10

Those who receive 40 points or higher are ranked in the chapter pool from highest to lowest based on their point scores. Applicants who receive a point score of 39 or less are notified that they have not qualified, but may reapply during the next application period. Copies of the letters are filed in their folders.

A period of at least 1 month shall be allowed for new apprenticeship applicants to apply, and for apprenticeship applicants to reapply. New and previous applicants will be ranked on the basis of their comparative qualifications. Qualified applicants shall be retained on the list of eligibles subject to selection for a period of 2 years unless otherwise requested by applicant.

Information on apprenticeship openings shall be posted at the normal place of application for apprenticeship and disseminated to the local employment service offices, community organizations which can effectively reach minority and female (minority and nonminority) groups, minority newspapers, the Bureau of Apprenticeship and Training, and the local schools at least 1 month prior to the date when such applications will be accepted. At least 1 month will be allowed for acceptance of apprenticeship applications. Records of the selection process including interviews will be maintained for a period of 5 years.

Sponsored Applicant

For those who are gainfully employed by a subscribing employer and who apply as an applicant into the approved apprenticeship program and have met the minimum qualifications for apprenticeship application as enumerated on page 3 of these standards, shall qualify for immediate registration into the program.

Application for Apprenticeship

Application for apprenticeship under these standards shall be filed with the apprenticeship committee on application blanks furnished by the committee. All applications must be filled out completely and signed by the applicant.

Apprenticeship Registration

The apprentice (and if a minor, the parent or guardian) shall sign an apprenticeship agreement, which shall be signed by the apprenticeship committee. Copies of the agreement will be furnished to the apprentice, the employer, the committee, the registration agency, and where applicable, the local Veterans Administration office. Some State apprenticeship agencies require the use of their own apprenticeship agreement forms. In such instances, the agreement forms may be obtained from the staffs of the State agency or the Bureau of Apprenticeship and Training.

Obligations of the Employer and Apprentice

The employer agrees that apprentices will be assigned work under such conditions as will result in normal advancement. Apprentices will be required to make satisfactory progress in both on-the-job training and related technical studies. The employer also agrees that the apprentice will not be employed in a manner that may be considered to be in conflict with the standards. After being selected for apprenticeship by the apprenticeship committee, reading the rules and standards formulated by the committee for the training, and understanding them and all conditions therein, the apprentice agrees to serve such time and perform such on-the-job training, as well as complete classroom studies in technical and theoretical subjects related to the trade, as the committee may deem necessary to produce a skilled craftworker.

Term of Apprenticeship

It is the intent in this program to move from a time-based duration of training to one that permits apprentices to advance at a pace commensurate with their skills, knowledge, and motivation. The competency based term of training under which this program operates for each occupation is identified on the attached work processes. Under this option of advancement based upon demonstrated achievement of skills and knowledge by the individual apprentice, the apprentice's term of training may be reduced to not less than one-half the stated traditional term for the occupation. Apprentices failing to make satisfactory progress on the job or in related studies may

have a period of training extended by not more than one-half the traditional work hours.

Achievement of skills and knowledge can be documented through the use of the ABC's Wheels of Learning curriculi; a competency based, task oriented, modular training program. By recording apprentice achievements for the written and performance tests, the total classroom hours and required On-the-Job-Training is a supportive requirement to skill and knowledge acquisition. (See Exhibit F)

Completion of an apprenticeship utilizing the competency format must be at the approval of the apprentices' sponsoring employer and the chapter apprenticeship committee.

Probationary Period

All apprentices employed in conformity with these standards shall be subject to a probationary period not to exceed (1000) hours or six months after signing apprenticeship agreement.

During the probationary period, the apprenticeship agreement may be cancelled by the apprentice or by the employer without stated cause. After the probationary period, the agreement may be cancelled at the request of the apprentice, or by the employer for good cause. The reason for termination shall be reported to the committee and to the registration agency. When an employer terminates an apprentice who has completed the probationary period, the committee shall be immediately notified, giving the name of the apprentice, the reason of termination,

and the effective date of same. Said apprentice will then be interviewed by the committee and placed with another employer where appropriate. Disposition of such cases shall be made by the committee within 30 days of the receipt of notice of termination, and the registration agency shall be notified.

An apprentice who successfully completes the probationary period will be granted full credit for the 1000 hours, toward completion of apprenticeship.

Related Instruction

Apprentices registered under these standards are required *each year* to attend a minimum of 144 hours of technical and theoretical instruction of *its equivalent* in subjects related to their trade, and shall be required to pass an examination in each subject before being granted a certificate of completion. Safety in the use of tools and equipment and in job conduct shall be included in the related instruction curriculum.

Attendance at related instruction classes shall not be considered as hours worked when instruction is given outside of regular working hours, and apprentices shall not be paid for attending such related instruction classes.

Where classes are not available through the local school, other organized trade, industrial, or correspondence courses of equivalent value may be approved by the apprenticeship committee.

Ratio of Apprentices to Journeypersons

Employers shall agree that only such number of Apprentices will be employed who can be given adequate training, and supervision and a reasonable opportunity for employment in the trade to which apprentices (Note: this ratio should be established by the local chapter for their area.)

Hours of Work

The hours of work for apprentices and the conditions associated therewith shall be the same as those for journeypersons. The apprentice shall not be required to work such hours as would interfere with attendance at related instruction classes except in cases of emergency. In each case, the committee shall be notified by the employer in writing of the emergency and the nature thereof. This notice shall be on company stationery and signed by an officer of the company.

Each apprentice will receive work experience in the trade in which they are indentured, in accordance with the attached work processes, though not necessarily in the order listed.

Continuity of Employment

It shall be the duty and responsibility of the committee to provide, as far as possible, continuous employment to all apprentices in its program, in the event the employer does not have sufficient work for the apprentice, the committee may transfer this apprentice to another employer signature to these Standards of

Apprenticeship. Any transfer of employment will be with the consent of all parties to the agreement.

If, for any reason beyond the control of the apprentice, such as a lockout, loss of business, or layoff, the apprentice is effected, the agreement of apprenticeship shall be automatically suspended, but not revoked, except that opportunity for related instruction shall continue to be available to the apprentice. The committee will place that apprentice at the top of the applicant pool and will actively try to find him/her employment with another employer signature to these standards.

Wages of Apprentices

Apprentices shall be paid a progressively increasing schedule of wages consistent with skill performance and knowledge levels achieved. Apprentice wages shall be based on a percentage of wages paid journeypersons.

Within each registered craft, the arithmetic average of the individual contractor's journeyperson rates will become the journeyperson rate upon which the apprentice wage schedules (as listed with the trade work processes) are applied for apprentices employed by that contractor. Each individual participating contractor shall be responsible for the submission of journeyperson pay rates for each craft employed by the company. It will be the contractor's responsibility to maintain the information on an up-to-date basis. Surveys will be conducted annually by each participating contractor to determine the average journeyperson wage rate, and if there has been any change in the rate from the last reporting period, the apprenticeship committee will be so notified.

The apprentice will be made aware of the employer's average journeyperson rate prior to being sent on the job. In the event the apprentice is transferred or changes employers, his/her wages will be based upon the journeyperson rates of the new employer, with the achieved percentage level being retained.

In no event will an apprentice's entry wage rate fall below the current Federal minimum wage as prescribed by the Fair Labor Standards Act.

Credit for Previous Experience

Apprentices who receive credit for previous experience shall be paid the rate for the period to which such credit advances them. Credit for previous experience will be granted after evaluation by the apprenticeship committee and a probationary period not to exceed 500 hours.

Apprentices will also be granted credit for related theoretical training received, upon submission of satisfactory proof thereof to the apprenticeship committee.

Credit During the Term of Apprenticeship

Apprentices who demonstrate exceptional ability may be advanced ahead of their scheduled period of advancement into the next period of their apprenticeship on approval of the apprenticeship committee. Apprentices shall receive the wage rate for the period to which they are advanced.

Certification of Completion of Apprenticeship

Apprentices who successfully complete training shall be awarded a Certificate of Completion of Apprenticeship by the appropriate registration agency upon request by the program sponsor.

Apprentice Complaint Procedure (Grievence [sic] Procedures)

In the event of a disagreement between the employer and the apprentice of disputes arising out of the provisions of local apprenticeship standards, either party may consult the registration agency for an interpretation or opinion.

The registration agency shall be furnished the name and the address of the appropriate authority to receive, process and to make disposition of complaints. This information shall be stated in the local standards.

Modification

These apprenticeship standards shall not be revised except by a two-thirds vote of the committee, and then only upon 30 days notice in writing to all members of the committee. Such amendments shall not alter apprenticeship agreements in effect at the time of the change without the express consent of all parties to such agreements. The registration agency shall be notified of all revisions to the standards.

Deregistration

This program may be deregistered upon the voluntary action of the sponsor, by the sponsor's request for cancellation of the registration. The program may also be deregistered, for reasonable cause, by the Bureau of apprenticeship and Training, U.S. Department of Labor, when the Bureau institutes formal deregistration proceedings in accordance with the provisions of Title 29 Code of Federal Regulations Part 29.

Upon deregistration or voluntary cancellation of the program, the sponsor will inform each apprentice, within 15 days, of the deregistration or cancellation, and the effect of such action. This notification will conform to the requirements of 29 CFR 29.7.

Registration

The registration of these national standards (guidelines) by the Bureau of Apprenticeship and Training certifies that the standards conform to the labor standards which the U.S. department of Labor believes are necessary to safeguard the welfare of apprentices in our industry. The Labor Department's general labor standards for apprenticeship programs are set forth in Title 29 Code of Federal Regulations Part 29.

Official Approval

Before becoming effective, these standards and all amendments thereto must have the official approval of the apprenticeship committee and the chapter and be registered with the registration agency.

Consultants

The committee may request, at any time it deems advisable, interested agencies to appoint representatives to serve as consultants. Such consultants will serve without vote and be available for consultation on matters that will improve the training of apprentices and the operation of this program.

Safety

Safety in the use of tools and equipment and in job conduct shall be stressed in related classes and on-the-job training throughout the terms of apprenticeship. Apprentices shall be provided with initial indoctrination and instruction in order to enable them to perform their work in a safe manner.

Initial indoctrination shall include instructions relative to pertinent company safety regulations, reporting of accidents, and availability of first aid medical facilities.

The employer shall at all times exercise reasonable precaution for the health and safety of apprentices engaged in the performance of their work. The apprentice and the employer shall comply with all applicable provisions of Federal, State, and municipal safety, health, and sanitation statutes and codes.

As an integral part of this training program, the apprenticeship supervisor and/or instructor shall provide competent training and instruction pertaining to safe work habits to keep the apprentice informed of the methods necessary to perform all phases of the work in a proper and safe manner.

The employer will see that the apprentice is trained in accordance with the OSHA standards as described in Public Law 91-596 dated December 29, 1970.

Compliance Assurance

The sponsors of these standards of apprenticeship certify that they will operate this program in compliance with all applicable Federal, State and local laws and regulations.

NATIONAL APPROVAL

Approved By: Associated Builders and Contractors, Inc. (National)

/s/ Robert L. Turner Robert L. Turner, President Associated Builders and Contractors, Inc.	Washington D.C. City	5/16/89 Date
/s/ Thomas A. Brigger Thomas A. Brigger, Chairman National Education Committee, Associated Builders and Contractors, Inc.	Washington, D.C. City	5/16/89 Date
/s/ Frederick E. Powers	Washington D.C. City	5/16/89 Date

Frederick E.
Powers,
Director of Education,
Associated Builders
and Contractors, Inc.

Registered as part of the National Apprenticeship Program in accordance with the basic standards of apprenticeship established by the Secretary of Labor.

/s/ James VanErden — 5/16/89
James VanErden, Director, Bureau of Apprenticeship and Training — Date

N-90044
Registration No.

Local Program Approvals

LOCAL PROGRAM ADOPTED by the Sierra Nevada Chapter, Associated Builders and Contractors, Inc. 28th day of February 19 90.

/s/ (Kelly Hiatt)
Chapter President

/s/ John P. Solaro
Chair-person; Chapter Apprenticeship and Training Committee

_____ — 3-21-90
Authorized Official Registration Agency — Date

Section II

Work Processes

Electrician (construction)
824.261-010

Apprentice Wage Structure

1st 6 months .....50 percent of journeyperson's rate

2nd 6 months.....55 percent of journeyperson's rate

3rd 6 months .....60 percent of journeyperson's rate

4th 6 months .....70 percent of journeyperson's rate

5th 6 months .....75 percent of journeyperson's rate

6th 6 months .....80 percent of journeyperson's rate

7th 6 months .....85 percent of journeyperson's rate

8th 6 months .....90 percent of journeyperson's rate

Work Processes	**HOURS**
1. Preliminary work	600

a. Learning the names and uses of the equipment used in the trade, such as kind, size, and use of cable, wire, boxes, conduits and fitting, switches, receptacles, service switches, shutouts, etc.

b. Learning names and uses of the various tools use in assembling this material, care of these tools, and other instructions necessary to familiarize the apprentice with the material and tools of the trade.

c. Safety.

2. Residential and commercial rough wiring 2500

a. Assisting in getting the material from stockroom.

b. Loading truck and unleading [sic] material and equipment on the job.

c. Laying out the various outlets, switches, receptacles, and other details of the job from blueprints or by direction of the superintendent of construction.

d. Laying out the system with materials to be used, where they are to be placed, and other details as to how they shall be run.

e. Cutting wires, cables, conduit and raceway; threading and reaming conduit, boring and cutting chases under the direction of the journeyperson.

f. Installing various kinds of wires, cables, and conduits in accordance with requirements.

g. Assisting journeyperson in pulling wires, attaching wires to fishtape, and keeping wires from kinks or abrasions.

h. Connecting conductors to switches, receptacles, or appliances with proper methods of splicing, or soldering, and typing.

i. Installing service switches or load center and subfeeders and fastening up these parts, running raceways and pulling in conductors under the direction of journeyperson electricians.

j. Assisting in preparing lists of materials used, including names, number of pieces, or number of feet, etc. for office records.

k. Loading unused material and cleaning up job area.

3. Residential and commercial finish work 1500

   a. Connecting and setting switches, receptacles, plates, etc.

   b. Installing proper size and types of fuses for each circuit.

   c. Installing and connecting various kinds of fixtures.

   d. Tracing the polarity of conductors and devices.

   e. Testing the circuit for grounds and shorts and locating and correcting job defects.

   f. Assisting journeyperson in installing and completion of work in accordance with the rules and regulations of the National Board of Fire Underwriters and special local regulations – proper sizes of wires, service, conducts, etc.

4. Industrial lighting and service installation 2000

   a. Installing rigid conduit, electric metallic tubing, BX armored cable wiremolds on all types of heavy electrical equipment and major-size service entrance

   b. Wiring all types (gas, oil, stoker, etc.) of heating equipment.

   c. Installing wiring and controls for air conditioning.

5. Troubleshooting 1000

   a. Repairing all kinds of electrical work.

   b. Checking out trouble and making repairs under supervision of electrician.

   c. Checking out trouble and making repairs without supervision.

6. Motor installation and control 400
   a. Installing overcurrent devices.
   b. Checking for proper installation and rotation.
   c. Installing replacement motors.
   d. Analyzing motor circuits and troubleshooting.
   e. Installing emergency generators and controls.
   f. Installing pushbuttons, pilot lights, relays, timing devices, and interlocking controls.

   Total 8000

AFFIRMATIVE ACTION PLAN AND SELECTION PROCEDURE

(To Conform With title 29, Code of Federal Regulations, Part 30, for Equal Employment Opportunity)

Sierra Nevada Chapter, Inc
Chapter Name

Associated Builders and Contractors, Inc. Apprenticeship and Training Program

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In order to conform with Federal law for equal employment opportunity n [sic] apprenticeship, Sierra Nevada Chapter, Inc . (Chapter Name)

Associated Builders and contractors, [sic] Inc., Apprenticeship program hereby adopts the following nondiscriminatory pledge, affirmative action plan, and selection procedure.

Equal Employment Opportunity Pledge

The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, color religion, national origin, or sex. The Associated Builders and Contractors, Inc., Sierra Nevada Chapter, Inc . (Chapter Name)

Apprenticeship Committee will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under title 29, CFR, part 30.

Affirmative Action Plan

The Associated Builders and Contractors, Inc. Sierra Nevada Chapter, Inc. (Chapter name) registered apprenticeship program is pledged to achieve equal employment opportunity for all applicants for apprenticeship regardless of race, color, religion, national origin, or sex through this affirmative action plan. Affirmative action is not mere passive nondiscrimination but involves action which will equalize opportunity in apprenticeship so as to allow full utilization of minority and female (minority and non-minority) workers potential. The Associated Builders and Contractors, Inc. Sierra Nevada Chapter, Inc. (Chapter name)

Apprenticeship committee pledges to disseminate this policy internally by publicizing it in the sponsor's newsletter and by conducting meetings with participating contractors to explain the intent of the program and individual responsibility for effective implementation.

Outreach and Recruitment

The Associated Builders and Contractors, Inc. Sierra Nevada Chapter, Inc. (Chapter name) Apprenticeship Committee pledges to engage in the following outreach and positive recruitment activities:

1. At least 30 days prior to the earliest date for application for apprenticeship, notice of openings will be disseminated by means of letter of notification:
   a. Local boards of education for forwarding to craft teachers and career counselors in the school systems.
   b. Local Apprenticeship Information Centers.
   c. The following organizations: Urban League, Job Corps, and all minority and female (minority and non-minority) oriented civil rights groups in the local area.
   d. Local employment service offices in the training area.
   e. The Bureau of Apprenticeship and Training (BAT) or State Apprenticeship Council (SAC) representative servicing the program.
   f. In an SAC State, the State Director of BAT.
2. Press releases of apprenticeship openings will be made available to local newspapers, including the minority newspapers and all local radio stations.
3. Representatives of the Associated Builders and Contractors, Inc. Sierra Nevada Chapter (Chapter name) Apprenticeship Committee will, at every available opportunity, participate in apprenticeship workshops, seminars, or any other programs conducted by the State employment service for school and employment service counselors.

4. Representatives of the Associated Builders and Contractors, Inc. Sierra Nevada Chapter (Chapter Name) Apprenticeship Committee will, in every way possible, cooperate with local school boards and vocational-education systems to develop programs in preparing students for entry into apprenticeship programs.

Sample Analysis for Underutilization

1. The minority population in Northern Nevada (area) is 10.6 % (percentage) of the total area population. The female (minority and non-minority) population in Northern Nv (area) is 49.7 % (percentage) of the total are population.

2. The minority representation in the labor force in Northern Nevada (area) is established to be 8.6 % (percentage). The female (minority and non-minority) representation n [sic] the labor force in Northern Nevada (area) is established to be 43.4 % (percentage).

3. Sierra Nevada Chapter (Chapter name) as of Feb. 28, 1990 (Mo., day, hr.) employs 14 % (number, percentage) of minority apprentices and 2 % (number, percentage) of female (minority, non-minority) apprentices.

4. Sierra Nevada Chapter (Chapter name) as of Feb. 28, 1990 (Mo., day, hr.) employs 0 % (number, percentage) minority journeyperson and 0 % (number, percentage) of female (minority, non-minority) journeyperson of a total 0 (number journeypersons.)

5. There are (are or are not) sufficient available minorities, are (are or are not) sufficient available females (minority, non-minority) with the present or

potential capacity for apprenticeship in the program sponsor's labor market area.

Goals and Timetables

The above analysis indicates Sierra Nevada (Chapter name) Apprenticeship Program is under underutilizer of minorities and females (minority and non-minority). Therefore, the Sierra Nevada (Chapter name) pledges that 10 % (percentage) of apprentices selected this year will be minority group persons, and 20 % (percentage) of apprentices selected this year will be female (minority and non-minority) group and no less than the same percentage of minority and female (minority and non-minority) group selections will be made in each successive year until there is no underutilization of minority group or female (minority and non-minority) group persons in the crafts represented. It should be fully realized that any good faith effort will be contingent upon the availability of qualified apprenticeship applicants who meet the criteria of selection procedures.

Selection Procedure

The Associated Builders and Contractors, Inc. Sierra Nevada Chapter, Inc. (Chapter name) Apprenticeship committee has used selection method 4 as its selection procedure. Apprentices shall be selected on a basis of objective and specific qualification standards. A brief summary of each interview and the conclusions on each of the specific factors, e.g., motivation, ambition, willingness to accept direction, etc., shall be kept.

Adequate records shall be maintained. They shall include a summary of the qualifications of each applicant, the basis for evaluation and for selection or rejection of each applicant, and the original application for each applicant. In addition, information shall be kept on the operation of the apprenticeship program, including, but not limited to, job assignment, promotion, demotion, lay-off or termination, rates of pay or other forms of compensation, or conditions of work; and any other records pertinent to determination of compliance shall be retained. Records pertaining to individual applicants, whether selected or rejected, shall be maintained in such a manner as to permit identification of minority and female (minority and non-minority) participants. Records on each applicant shall be maintained for a period of 5 years and made available, upon request, to the registration agency or other authorized representatives.

Signature(s) of authorized official(s)

Date: 02/28/90

/s/ John P. Solaro
Chairman
Apprenticeship
Committee

/s/ Kelly Hiatt
President,
Chapter name

Kelly Hiatt,
Sierra Nevada Chapter

Sierra Nevada Chapter (Chapter name) Associated Builders & Contractors, Inc.

APPRENTICESHIP PROGRAM

SELECTION PROCEDURE

1. Apprenticeship Committee of the Sierra Nevada Chapter (Chapter name) will screen and select the apprentices who will be referred to the employer.

2. Applications of responding candidates will be recorded and filed by the Sierra Nevada Chapter (Chapter name) Office. Applications will be kept on file for not less than 5 years.

   Application forms may be obtained from the Sierra Nevada Chapter (Chapter name)

   Associated Builders and Contractors, Inc. 1761 Silverada Blvd, Reno, NV 89512 (Chapter address), between the hours of

   8 am to 4:30 pm, dates and times ~~only~~, as announced. (Time and days)

   In order for the Associated Builders and Contractors, Inc., _____ Apprenticeship Committee to develop a (Chapter name)

   pool of qualified applicants to fill apprenticeship openings that have and will become available, the following procedure has been adopted:

   To create a pool of eligibles, all applications received before _____ will be processed by the committee (Month, day, year)

   before _____. Applications will be accepted (Month, day, year)

~~throughout the year and qualified applicants processed to the eligible pool in rank order every 90 days, starting with applicants from~~ _____
Month, day, year
~~pool will be announced at least twice yearly at 6 month intervals. Where openings occur, the highest ranking applicant available in the pool will be referred.~~

Point Rating System

Ranking criteria are as follows:

Aptitude Test Results
(GATB Administered by State Labor Department or other agency)

Passed-Rate	H	20
	M	10
	L	0

Educational Background-subjects related to the trade
(from applicant's school transcript)

Grade average of "C" or above for:

High School General or Related Math – 5
Physical Science – 10; Algebra – 10
Two Years of related vocational training – 20
One Year of related vocational training – 10

Interview

Interest	3X	Value Ratings: Exceptional	3
Sincerity	3X	Good	2
Adaptability	2X	Fair	1
		Unsatisfactory	0

Example: Exceptional interest 3x3=9

Fair sincerity	3x1=1	
Good adaptability	2x2=4	
Total on this section		16 points
Previous Experience		20
Related work in military service	- 1-10	
Related Civilian work	- 1-10	

Those who receive 40 points or higher are ranked in the chapter pool from highest to lowest based on their point scores. Applicants who receive a point score of 39 or less are notified that they have not qualified, but may reapply during the next application period. Copies of the letters are filed in their folders.

A period of at least 1 month shall be allowed for new apprenticeship applicants to apply, and for apprenticeship applicants to reapply. New and previous applicants will be ranked on the basis of their comparative qualifications. Qualified applicants shall be retained on the list of eligibles subject to selection for a period of 2 years.

Information on apprenticeship openings shall be posted at the normal place of application for apprenticeship and disseminated to the local employment service offices, community organizations which can effectively reach minority and female (minority and nonminority) groups, minority newspapers, the Bureau of Apprenticeship and Training, and the local schools at least 1 month prior to the date when such applications will be accepted. At least 1 month will be allowed for acceptance of apprenticeship applications. Records of the selection process including interviews will be maintained for a period of 5 years.

It is mandatory under title 29 CFR Part 30 that all employers participating in the chapter apprenticeship program sign the letter shown as Exhibit E.

By signing this letter, the contractor is certifying agreement to:

1. Comply with the standards of apprenticeship.
2. Indenture as an apprentice the applicant sent by the chapter from the top of the list in the chapter pool.

Should the contractor refuse to sign the letter or violate the intent of the letter, the chapter, under penalty of law, must take away any apprentices employed and disqualify the contractor from indenturing anyone under the chapter program until the letter is signed.

Prerequisites for Apprenticeship Selection

1. Applicants must provide a simple statement by a medical doctor stating they have the physical ability to do construction work in a particular trade.
2. Applicants must be of legal age to handle the tools of the trade for which application is made and provide proof of age.
3. Applicants should be high school graduates, but all will be considered.
4. Applicants seeking credit for high school courses must provide a transcript.
5. They must have some mode of transportation to the employer's place of business and/or jobsite and to

the place where classroom job-related instruction is conducted.

6. Applicants must provide proof of previous work experience or vocational training in order to receive credit for their experience or training.

7. Applicants, if veterans, must provide discharge papers and, if claiming credit for military training in the trade, must provide proof of this training.

8. Applicants must appear before the apprenticeship committee for an interview.

9. The chapter will arrange for applicants to take the aptitude tests. To be administered by Nevada State Employment Security Department.
Name of agency

When an applicant for an opening in the apprenticeship program comes into the chapter office, he/she first fills out an application form (Exhibit A). A file folder is made up with the applicant's name placed on the tab.

The applicant is then given the direction sheet entitled "How to Apply for Apprenticeship with Associated Builders and Contractors, Inc." (Exhibit B).

The chapter then sets a date for the applicant to take the aptitude tests with the Employment Security Dept. After the tests are given to
Name of agency
the applicant, he/she is told to supply the items listed in 3a through 3e on the direction sheet. When the applicant supplies these items, they are placed in his/her file jacket.

Once all prerequisites are met, the applicant is scheduled for an interview with the apprenticeship committee. The committee uses the form entitled "Interview Evaluation" (Exhibit D) to conduct the interview. The final step is to fill out the form entitled "Point System Selection" (Exhibit C). This form is completed by using all of the material supplied by the applicant, the apprenticeship committee interview, and the test results from the Nevada State Employment Security Department
Name of agency

The points are totaled. When a contractor telephones a request for an apprentice, the applicant ranking at the top of the list must be sent.

Exibit A

APPRENTICE APPLICATION
Associated Builders and Contractors, Inc.

_____

PRINT – LAST, FIRST, MIDDLE

_____

ADDRESS TELEPHONE NUMBER

_____

_____

_____

NAME PARENT OR GUARDIAN, IF UNDER 21

RACE/ETHNIC/SEX GROUP:

___ American Indian ___ Black

___ Oriental ___ Male

___ Spanish Surnamed American

___ White (Optional) ___ Female

TRADE INTEREST IN _____

_____

(BEGIN WITH PRESENT JOB AND WORK BACKWARDS)

DATE _____

	FROM	TO	ADDRESS & NAME OF COMPANY	REASON FOR LEAVING
1.				
2.				
3.				
4.				

School	Name & Location of School	Number of Yrs. Completed	Trade Related Courses
High School			
College			
Trade, Business or Correspondence School			

Exhibit B

How to Apply for Apprenticeship with Associated Builders and Contractors, Inc.

1. You must apply in person at the Chapter office, _____ only,
   Day(s)
   between _____.
   Time(s)

2. Applicant must take GATB administered by the _____ on the
   Name of agency
   day at at time appointed. (Chapter office will make appointment.)

3. The following information must be in before your application can be processed:

   a. Doctor's certificate, stating you are physically able to do construction work and signed by attending physician.

   b. Verification that you are over 17 years old.

   c. Transcripts from the guidance department of school attended if seeking related course credit.

   d. Proof of work experience – i.e., letter from employer listing experience, if you have work experience in the trade.

   e. If veteran, discharge papers and, if claiming credit for training in trade, proof of this training.

The applicant will be required to meet with the apprenticeship committee for an interview. You will be notified by mail when and where the interview will be held.

NOTE: The apprentice must have some mode of transportation to the employer's place of business and/or jobsite and to the place where classroom job-related instruction is conducted.

Exhibit C

Point System Selection

Name: _____

1. Aptitude Tests _____

   High -20
   Marginal-10
   Low - 0

2. Education Background _____

   Subjects related to trade (from school transcript) Grade of "C" or above for:

   -High School General or Related Math – 5
   -Physical Science – 10
   -Algebra – 10
   -Completion of 1 year of related vocational training – 10
   -Completion of 2 years of related vocational training – 20

3. Interview _____

   -Interview – 9
   -Sincerity – 9
   -Adaptability – 6

4. Work experience in desired trade _____

   a. Work experience in trade interested in – 10
   b. Military experience (training in trade interested in) – 10

TOTAL _____

Exhibit D

Interview Evaluation _____

Name

	0 POOR	1 FAIR	2 GOOD	3 EXCEP-TIONAL	TOTAL
Interest					X 3 =
Sincerity					X 3 =
Adaptability					X 2 =
Interviewer(s) Total					_____

Signature of Interviewer(s) _____

_____

_____

Date _____

The local chapter should make the interview section more specific, even to the point of having a written list of questions which are asked to each applicant.

Exhibit E

Sample Employer Acceptance Agreement[1]

Date _____

_____ hereby agrees to comply with the provisions
Company

of the apprenticeship standards formulated by the ____
Chapter name
Chapter, Associated Builders and Contractors, Incorporated. I agree to carry out the intent and purpose of the said standards and to abide by the rules and decisions of the apprenticeship committee established under these standards by the Associated Builders and Contractors, Inc. I have been furnished a true copy of the apprenticeship standards and have read and understand them and do hereby request certification to train ___ apprentices,
Trade
under the provisions of these standards, with all attendant rights and benefits thereof, until cancelled voluntarily or revoked for good cause by the registration agency.

Furthermore, I agree to accept for employment apprentices who are selected and referred to me by the local chapter apprenticeship committee.

Signed _____ Date _____

_____
Title

_____

[1] Registration agency will require each contractor to sign a facsimile of this letter.

Exhibit F

Wage Progression Schedule for Performanced Based on Apprenticeship Training

1. Schedule:

Ingremental Period	% Achieved Performance Level	& Journeyperson's Rate
1	0	50
2	12.5	55
3	25.0	60
4	37.5	65
5	50.0	70
6	62.5	75
7	75.0	80
8	87.5	90
Complete	100.0	100

2. Journeymans Wage

The arithmetic average of the individual contractor's journey worker rates upon which the apprentice wage schedules are applied for apprentices employed by that contractor.